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

In the Matter of the Accusation Against:

SEAN A. GUTIERREZ

465 Belle Vista Dr. #177 Chula Vista, CA 91910

Case No. 3062

OAH No. L-2008030530

Pharmacy Technician Reg. No. TCH 36449

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 August 27, 2008

It is so ORDERED July 28, 2008

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

KENNETH H. SCHELL Board President

1	EDMUND G. BROWN JR., Attorney General	
2	of the State of California JAMES M. LEDAKIS	
3	Supervising Deputy Attorney General T. MICHELLE LAIRD, State Bar No. 162979	
4	Deputy Attorney General	
5	San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2323 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9		
10	BEFORE	
11	BOARD OF PHA DEPARTMENT OF CON	
12	STATE OF CAL	IFORNIA
13	In the Matter of the Accusation Against:	Case No. 3062
14	SEAN A. GUTIERREZ	OAH No. L-2008030530
15	465 Belle Vista Dr. #177 Chula Vista, CA 91910	STIPULATED SURRENDER OF LICENSE AND ORDER
16	Pharmacy Technician Reg. No. TCH 36449	
17		
18	Respondent.	
19	IT IS HEREBY STIPULATED AND	AGREED by and between the parties in this
20	proceeding that the following matters are true:	
21	PARTIE	<u>S</u>
22	1. Virginia Herold (Complainant) is the Executive Officer of the Board of
23	Pharmacy. She brought this action solely in her official	cial capacity and is represented in this matter
24	by Edmund G. Brown Jr., Attorney General of the St	ate of California, by T. Michelle Laird,
25	Deputy Attorney General.	
26	2. Sean A. Gutierrez (Responder	t) is representing himself in this proceeding
27	and has chosen not to exercise his right to be represe	nted by counsel.
28		
	1	

1	3. On or about February 14, 2001, the Board of Pharmacy issued Pharmacy
2	Technician Registration No. TCH 36449 to Sean A. Gutierrez. The Registration was in full force
3	and effect at all times relevant to the charges brought in Accusation No. 3062 and will expire on
4	July 31, 2008, unless renewed.
5	JURISDICTION
6	4. Accusation No. 3062 was filed before the Board of Pharmacy (Board),
7 ·	Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
8	and all other statutorily required documents were properly served on Respondent on December 5,
9	2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
10	Accusation No. 3062 is attached hereto as exhibit A and is incorporated by reference.
11	ADVISEMENT AND WAIVERS
12	5. Respondent has carefully read and understands the charges and allegations
13	in Accusation No. 3062. Respondent also has carefully read and understands the effects of this
14	Stipulated Surrender of License and Order.
15	6. Respondent is fully aware of his legal rights in this matter, including the
16	right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17	counsel at his own expense; the right to confront and cross-examine the witnesses against him;
18	the right to present evidence and to testify on his own behalf; the right to the issuance of
19	subpoenas to compel the attendance of witnesses and the production of documents; the right to
20	reconsideration and court review of an adverse decision; and all other rights accorded by the
21	California Administrative Procedure Act and other applicable laws.
22	7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23	each and every right set forth above.
24	CULPABILITY
25	8. Respondent admits the truth of each and every charge and allegation in
26	Accusation No. 3062, agrees that cause exists for discipline and hereby surrenders his Pharmacy
27	Technician Registration No. TCH 36449 for the Board's formal acceptance.
28	

9. Respondent understands that by signing this stipulation he enables the
 Board to issue an order accepting the surrender of his Pharmacy Technician Registration without
 further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. 5 6 Respondent understands and agrees that counsel for Complainant and the staff of the Board of 7 Pharmacy may communicate directly with the Board regarding this stipulation and surrender, 8 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 9 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation 10 11 as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or 12 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. 13

14 11. The parties understand and agree that facsimile copies of this Stipulated
15 Surrender of License and Order, including facsimile signatures thereto, shall have the same force
16 and effect as the originals.

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

20

4

<u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH
 36449, issued to Respondent Sean A. Gutierrez, is surrendered and accepted by the Board of
 Pharmacy.

The surrender of Respondent's Pharmacy Technician Registration and the
acceptance of the surrendered license by the Board shall constitute the imposition of discipline
against Respondent. This stipulation constitutes a record of the discipline and shall become a
part of Respondent's license history with the Board.

28 ///

1 14. Respondent shall lose all rights and privileges as a Pharmacy Technician
 2 in California as of the effective date of the Board's Decision and Order.

3 15. Respondent shall cause to be delivered to the Board his pocket technician
4 registration within 10 days of the effective date of the Decision and Order.

Respondent may not reapply for a technician registration from the Board 5 16. for three years from the effective date of the Decision and Order. Respondent fully understands 6 and agrees that if he ever files an application for licensure or a petition for reinstatement in the 7 State of California, the Board shall treat it as a new application for licensure. Respondent must 8 9 comply with all the laws, regulations and procedures for licensure in effect at the time the 10 application or petition is filed, and all of the charges and allegations contained in Accusation No. 3062 shall be deemed to be true, correct and admitted by Respondent when the Board determines 11 12 whether to grant or deny the application or petition. Respondent shall meet all requirements 13 applicable to that technician registration as of the date the application or petition for 14 reinstatement is submitted to the Board, including, but not limited to, certification by a nationally recognized body prior to the issuance of a new registration. 15 Respondent shall pay the Board its costs of investigation and enforcement 16 17. in the amount of \$4,620.00 prior to the issuance of any new or reinstated license. 17 18 ACCEPTANCE I have carefully read the Stipulated Surrender of License and Order. I understand 19 the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into 20 this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and 21 agree to be bound by the Decision and Order of the Board of Pharmacy. 22 23 DATED: 24 Gutiepopz 25 Respondent 26 27 111 28 ///

1	ENDORSEMENT
2	The foregoing Stipulated Surrender of License and Order is hereby respectfully
3	submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.
4	DATED: May 14,08
5	
6	EDMUND G. BROWN JR., Attorney General of the State of California
7	JAMES M. LEDAKIS
8-	Supervising Deputy Attorney General
9	
10	K. Michelle Faurd
11	T. MICHELLE LAIRD Deputy Attorney General
12	Attorneys for Complainant
13	
14	DOJ Matter ID: SD2007800308 80237972.wpd
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
	5
	n an ann ann ann ann ann ann ann an ann

Exhibit A

.

Accusation No. 3062

1 2 3	EDMUND G. BROWN JR., Attorney General of the State of California LINDA K. SCHNEIDER, Supervising Deputy Attorney General T. MICHELLE LAIRD, State Bar No. 162979 Deputy Attorney General	
4	California Department of Justice 110 West "A" Street, Suite 1100 San Diego, CA 92101	
6 7 8	P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2323 Facsimile: (619) 645-2061	
9	Attorneys for Complainant	
10	BEFORE 7	
11	BOARD OF PHA DEPARTMENT OF CON	SUMER AFFAIRS
12	STATE OF CAL	IFORNIA
13	In the Matter of the Accusation Against:	Case No. 3062
14	SEAN A. GUTIERREZ	
15	5617 Galloping Way Bonita, CA 91902	ACCUSATION
16	Pharmacy Technician Reg. No. TCH 36449	
17	Respondent.	
18	· · · · · · · · · · · · · · · · · · ·	
19	Complainant alleges:	
20	PARTIE	<u>S</u>
21	1. Virginia Herold (Complainant	t) brings this Accusation solely in her official
22	capacity as the Executive Officer of the Board of Ph	armacy, Department of Consumer Affairs.
23	2. On or about February 14, 200	1, the Board of Pharmacy issued Pharmacy
24	Technician Registration No. TCH 36449 to Sean A.	Gutierrez (Respondent). The Pharmacy
25	Technician Registration was in full force and effect a	at all times relevant to the charges brought
26	herein and will expire on July 31, 2008, unless renew	ved.
· 27	///	
28	///	
	1	

1 LURISDICTION 2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated. 5 . Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked. 6 . Section 118(b) of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. 11 EXELUTION PROVISIONS 12 C. Section 4301 of the Code states: 13 "The board shall take action against any holder of a license who is guilty of inprofessional 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: 14 "" 15 "" 16 "" 17 "" 18 "" 19 "" 10 "" 11 "" 12 "" 13 "The commission of any act involving moral suptrude, dishonesty, fraud, deceti, or corruption, whether the act is committed in the course of rela		
2 3. This Accusation is brought before the Board of Pharmacy (Board), 3 Department of Consumer Affairs, under the authority of the following laws. All section 4 Section 4300(a) of the Code provides that every license issued by the 5 6. Section 118(b) of the Code provides that the suspension, expiration, 8 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a 9 disciplinary action during the period within which the license may be renewed, restored, reissued 10 STATUTORY PROVISIONS 12 6. Section 4301 of the Code states: 13 "The board shall take action against any holder of a license who is guilty of 14 unprofessional conduct or whose license has been procured by fraud or misrepresentation or 15 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the 16 following: 17 " 18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, 19 deceit, or corruption, whether the act is committed in the course of relations as a licensee or 19 "(h) The administering to oneself, of any controlled substance, or the use of any 2 "(h) The administering to oneself, of any controlled substance, or the use of any		
 Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated. 4. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked. 5. Section 118(b) of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Statutory PROVISIONS 6. 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, desceit, or corruption, whether the act is a felony or misdemeanor or not. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the preson to conduct with safety to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	1	JURISDICTION
4 references are to the Business and Professions Code unless otherwise indicated. 5 4. Section 4300(a) of the Code provides that every license issued by the 6 Board may be suspended or revoked. 7 5. Section 118(b) of the Code provides that the suspension, expiration, 8 surrender or cancellation of a license shall not deprive the Board of juriadiction to proceed with a 9 disciplinary action during the period within which the license may be renewed, restored, reissued 10 or reinstated. 11 Statutory PROVISIONS 12 6. Section 4301 of the Code states: 13 "The board shall take action against any holder of a license who is guilty of 14 unprofessional conduct or whose license has been procured by fraud or misrepresentation or 15 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the 16 following: " 17 " 18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, 19 deceit, or corruption, whether the act is committed in the course of relations as a licensee or 10 " 11 " 12 "(h) The administering to oneself, of any controlle	2	3. This Accusation is brought before the Board of Pharmacy (Board),
5 4. Section 4300(a) of the Code provides that every license issued by the 6 Board may be suspended or revoked. 7 5. Section 118(b) of the Code provides that the suspension, expiration, 8 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a 9 disciplinary action during the period within which the license may be renewed, restored, reissued 10 STATUTORY PROVISIONS 11 Exact and the code states: 12 6. Section 4301 of the Code states: 13 "The board shall take action against any holder of a license who is guilty of 14 unprofessional conduct or whose license has been procured by fraud or misrepresentation or 15 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the 16 following: 17 " 18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, 19 deceit, or corruption, whether the act is committed in the course of relations as a licensee or 10 " 11 " 12 "(h) The administering to oneself, of any controlled substance, or the use of any 13 dangerous drug or of alcoholic beverages to the extent or i	3	Department of Consumer Affairs, under the authority of the following laws. All section
6 Board may be suspended or revoked. 7 5. Section 118(b) of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. 11 STATUTORY PROVISIONS 12 6. Section 4301 of the Code states: 13 "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: 17 " 18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is a felony or misdemeanor or not. 19 whether the act is a felony or misdemeanor or not. 11 " 12 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person ro to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public, the practice authorized by the license.	4	references are to the Business and Professions Code unless otherwise indicated.
7 5. Section 118(b) of the Code provides that the suspension, expiration, 8 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a 9 disciplinary action during the period within which the license may be renewed, restored, reissued 10 STATUTORY PROVISIONS 12 6. Section 4301 of the Code states: 13 "The board shall take action against any holder of a license who is guilty of 14 unprofessional conduct or whose license has been procured by fraud or misrepresentation or 15 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the 16 following: 17 " 18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, 19 deceit, or corruption, whether the act is committed in the course of relations as a licensee or 10 " 12 "(h) The administering to oncself, of any controlled substance, or the use of any 13 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or 19 the public, or to the extent that the use impairs the ability of the person to conduct with safety to 19 the public, or to the extent that the use impairs the ability of the person to conduct with safety to	5	4. Section 4300(a) of the Code provides that every license issued by the
 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. <u>STATUTORY PROVISIONS</u> 6. 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. " (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	6	Board may be suspended or revoked.
9 disciplinary action during the period within which the license may be renewed, restored, reissued 10 reinstated. 11 STATUTORY PROVISIONS 12 6. Section 4301 of the Code states: 13 "The board shall take action against any holder of a license who is guilty of 14 unprofessional conduct or whose license has been procured by fraud or misrepresentation or 15 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the 16 following: 17 " 18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, 19 deceit, or corruption, whether the act is committed in the course of relations as a licensee or 10 " 12 "(h) The administering to oneself, of any controlled substance, or the use of any 13 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or 19 injurious to oneself, to a person holding a license under this chapter, or to any other person or to 14 the public, or to the extent that the use impairs the ability of the person to conduct with safety to 19 the public the practice authorized by the license. 11 "	7	5. Section 118(b) of the Code provides that the suspension, expiration,
10 or reinstated. 11 STATUTORY PROVISIONS 12 6. Section 4301 of the Code states: 13 "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: 17 " 18 "(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. 11 " 12 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. 17 "	8	surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
11STATUTORY PROVISIONS126. Section 4301 of the Code states:13"The board shall take action against any holder of a license who is guilty of14unprofessional conduct or whose license has been procured by fraud or misrepresentation or15issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the16following:17"18"(f) The commission of any act involving moral turpitude, dishonesty, fraud,19deceit, or corruption, whether the act is a felony or misdemeanor or not.20"21"22"(h) The administering to oneself, of any controlled substance, or the use of any23dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or24injurious to oneself, to a person holding a license under this chapter, or to any other person or to25the public, or to the extent that the use impairs the ability of the person to conduct with safety to26"27"	9	disciplinary action during the period within which the license may be renewed, restored, reissued
 6. 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. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	10	or reinstated.
 "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. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. 	11	STATUTORY PROVISIONS
14unprofessional conduct or whose license has been procured by fraud or misrepresentation or15issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the16following:17"18"(f) The commission of any act involving moral turpitude, dishonesty, fraud,19deceit, or corruption, whether the act is committed in the course of relations as a licensee or20otherwise, and whether the act is a felony or misdemeanor or not.21"22"(h) The administering to oneself, of any controlled substance, or the use of any23dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or24injurious to oneself, to a person holding a license under this chapter, or to any other person or to25the public, or to the extent that the use impairs the ability of the person to conduct with safety to26"27"	12	6. Section 4301 of the Code states:
14unprofessional conduct or whose license has been procured by fraud or misrepresentation or15issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the16following:17"18"(f) The commission of any act involving moral turpitude, dishonesty, fraud,19deceit, or corruption, whether the act is committed in the course of relations as a licensee or20otherwise, and whether the act is a felony or misdemeanor or not.21"22"(h) The administering to oneself, of any controlled substance, or the use of any23dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or24injurious to oneself, to a person holding a license under this chapter, or to any other person or to25the public, or to the extent that the use impairs the ability of the person to conduct with safety to26"27"	13	"The board shall take action against any holder of a license who is guilty of
 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. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	14	
 " "(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. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	15	issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
 "(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. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	16	following:
 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. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	17	" · · · ·
 otherwise, and whether the act is a felony or misdemeanor or not. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	18	"(f) The commission of any act involving moral turpitude, dishonesty, fraud,
 otherwise, and whether the act is a felony or misdemeanor or not. " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	19	deceit, or corruption, whether the act is committed in the course of relations as a licensee or
 " " "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 	20	
 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 		
 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 		"(h) The administering to oneself, of any controlled substance, or the use of any
 injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 		
 the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. " 		
 26 the public the practice authorized by the license. 27 " 		
27		
	r I	

.

"(j) The violation of any of the statutes of this state, or any other state, or of the
 United States regulating controlled substances and dangerous drugs.

3

"

11

4 "(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. ... [T]he record of conviction shall be conclusive 5 evidence only of the fact that the conviction occurred. The board may inquire into the 6 circumstances surrounding the commission of the crime, in order to fix the degree of discipline 7 or, in the case of a conviction not involving controlled substances or dangerous drugs, to 8 9 determine if the conviction is of an offense substantially related to the qualifications, functions, 10 and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a 11 plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The 12 board may take action when the time for appeal has elapsed, or the judgment of conviction has 13 been affirmed on appeal or when an order granting probation is made suspending the imposition 14 of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing 15 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside 16 the verdict of guilty, or dismissing the accusation, information, or indictment." 17 7. Section 4022 of the Code states:

18 "Dangerous drug" or "dangerous device" means any drug or device unsafe for19 self-use in humans or animals, and includes the following:

20 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
21 without prescription," "Rx only," or words of similar import.

23 "(c) Any other drug or device that by federal or state law can be lawfully
24 dispensed only on prescription or furnished pursuant to Section 4006."

8. Section 4059 of the Code states, in pertinent part, that a person may not
 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

28 ///

Section 4060 of the Code states: 9.

1

2	"No person shall possess any controlled substance, except that furnished to a
3	person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
4	naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a
5	certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section
6	2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to
7	Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
8	(iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052."
9	10. Section 4327 of the Code states that any person who, while on duty, sells,
10	dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic
11	beverages shall be guilty of a misdemeanor.
12	11. Health and Safety Code section 11170 states that no person shall prescribe,
13	administer, or furnish a controlled substance for himself.
14	12. Health and Safety Code section 111300 states that it is unlawful for any
15	person to adulterate any drug or device.
16.	13. Health and Safety Code section 11173(a) states that it is unlawful for any
17	person to obtain controlled substances, or to procure or attempt to procure the administration of
18	or prescription for controlled substances by fraud, deceit, misrepresentation or subterfuge.
19	14. Health and Safety Code section 11350(a) states, "[e]xcept as otherwise
20	provided in this division, every person who possesses any controlled substance classified in
21	Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a
22	physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished
23	by imprisonment in the state prison."
24	15. Health and Safety Code section 11377 provides in relevant part:
25	"(a) Except as authorized by law and as otherwise provided in subdivision (b) or
26	Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
27	Business and Professions Code, every person who possesses any controlled substance which is
28	(1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in

1	subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
2	(3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
3	or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
4	11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
5	practice in this state, shall be punished by imprisonment in a county jail for a period of not more
6	than one year or in the state prison."
7	16. Penal Code section 484 states, in pertinent part, that every person who
8	shall unlawfully steal, take or fraudulently appropriate the property or labor of another commits
9	the crime of theft.
. 10	17. Penal Code section 488 states that cases of theft not elsewhere defined by
11	law are charged as petty theft.
12	18. California Code of Regulations, title 16 (CCR), section 1770, states:
13	For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the
14	Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a
15	substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a
16	manner consistent with the public health, safety, or welfare.
17	19. CCR section 1769, states, in pertinent part:
. 18	· · · · ·
19	(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been
20	convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:
21	(1) Nature and severity of the act(s) or offense(s).
22	(2) Total criminal record.
23	(3) The time that has elapsed since commission of the act(s) or offense(s).
24	(4) Whether the licensee has complied with all terms of parole, probation,
25	restitution or any other sanctions lawfully imposed against the licensee.
. 26	(5) Evidence, if any, of rehabilitation submitted by the licensee.
27	
28	///
	5

20. Drugs:

2	a. "Phenergan with Codeine," also known as "Promethazine with
3	Codeine," is a schedule V controlled substance under Health and Safety Code section
4	11058(c)(1), and a dangerous drug under Business and Professions Code section 4022.
5	b. "Phenergan VC with Codeine," also known as "Promethazine VC
6	with Codeine," is a schedule V controlled substance under Health and Safety Code section
7	11058(c)(1), and a dangerous drug under Business and Professions Code section 4022.
8	c. "Lortab 10/500," also known as "Hydrocodone 10mg with
9	Acetaminophen 500mg," is a schedule III controlled substance under Health and Safety Code
10	section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.
11	d. "Lortab 7.5/500," also known as "Hydrocodone 7.5mg with
12	Acetaminophen 500mg," is a schedule III controlled substance under Health and Safety Code
13	section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.
14	e. "Tussionex," also known as "Hydrocodone 10 mg with
15	Chlorpheniramine 8mg," is a schedule III controlled substance under Health and Safety Code
16	section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.
17	f. "Vicodin," also known as "Hydrocodone 5mg with Acetaminophen
18	500mg," is a schedule III controlled substance under Health and Safety Code section
19	11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.
20	g. "Vicodin HP," also known as "Hydrocodone 10mg with
21	Acetaminophen 660mg," is a schedule III controlled substance under Health and Safety Code
22	section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.
23	h. "Norco," also known as "Hydrocodone 10mg with Acetaminophen
24	325mg," is a schedule III controlled substance under Health and Safety Code section
25	11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.
26	i. "Hycotuss," also known as "Hydrocodone 5mg with Guaifenesin
27	100mg," is a schedule III controlled substance under Health and Safety Code section
28	11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

] ·	j. "Lorcet Plus," also known as "Hydrocodone 7.5mg with
2	Acetaminophen 650mg," is a schedule III controlled substance under Health and Safety Code
3	section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.
4	k. "Klonopin," as known as "Clonazepam," is a schedule IV
5	controlled substance under Health and Safety Code section 11057(d)(7), and a dangerous drug
6	under Business and Professions Code section 4022.
7	- l. "Xanax," as known as "Alprazolam," is a schedule IV controlled
8	substance under Health and Safety Code section 11057(d)(1), and a dangerous drug under
9	Business and Professions Code section 4022.
10	m. "Valium," as known as "Diazepam," is a schedule IV controlled
11	substance under Health and Safety Code section 11057(d)(9), and a dangerous drug under
12	Business and Professions Code section 4022.
13	n. "Protonix," also known as "Pantoprazole," is a dangerous drug
14	under Business and Professions Code section 4022.
15	o. "Soma 500mg," also known as "Carisprodol," is a dangerous drug
16	under Business and Professions Code section 4022.
17	p. "Robaxin 500mg," also known as "Methocarbamol," is a
18	dangerous drug under Business and Professions Code section 4022.
19	q. "Lotensin," also known as "Benazepril," is a dangerous drug under
. 20	Business and Professions Code section 4022.
21	<u>COST RECOVERY</u>
22	21. Section 125.3 of the Code states, in pertinent part, that the Board may
23	request the administrative law judge to direct a licentiate found to have committed a violation or
24	violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
. 25	and enforcement of the case.
26	FACTS
27	22. Respondent was employed as a pharmacy technician at Long's Drug Store
28	#304 (Long's), located in San Diego, California, from on or about June 25, 2004 through on or
	7

, .

about September 20, 2005. His job duties included processing prescriptions and serving
 pharmacy customers.

3 23. On or about September 13, 2005, a covert camera in Long's pharmacy
4 videotaped Respondent opening a bottle of Promethazine with Codeine Syrup, holding it to his
5 mouth and drinking from it three times during his work shift.

6 24. On or about September 14, 2005, a covert camera in Long's pharmacy
7 videotaped Respondent drinking from bottles of Promethazine with Codeine Syrup twice during
8 his work shift.

25. On or about September 15, 2005, during an interview with Long's 9 investigators, Respondent admitted taking prescription medications from Long's pharmacy for 10 his personal use over approximately the previous six months. Respondent admitted to taking 11 12 Lortab, Robaxin, Klonopin, Promethazine with Codeine, Soma, Tussionex, Lotensin, and 13 Protonix. He admitted to consuming the stolen drugs at work and also to removing them from 14 the store. Respondent estimated that he drank up to one-third of a 480ml bottle of Promethazine 15 with Codeine each time he worked. He also admitted that on several occasions he took cash 16 money, totaling approximately \$40.00, from Long's cash register. During the interview with the 17 investigators, Respondent returned ten tablets of Hydrocodone/Apap 10/500mg that he removed 18 from the pharmacy the previous day and which were then in his pocket.

Long's determined that Respondent's acknowledments of drug and cash
thefts totaled approximately \$4,892.23. Based on Respondent's admission of the amount of
Promethazine with Codeine he consumed each time he worked, Respondent was consuming,
while on duty as a pharmacy technician, 5-8 times the normal daily amount of Promethazine
based on a typical prescription of 1 to 2 teaspoons every 4-6 hours. Respondent was terminated
from his employment at Long's on or about September 20, 2005.

25 27. On or about the week of September 21, 2005, Long's conducted a
26 complete controlled substance inventory for the period from approximately December 1, 2004
27 through approximately September 28, 2005. Shortages of the following controlled substances
28 and amounts were noted:

1	Lortab 10/500mg - shortage of approximately 101 tablets;
2	Lortab 7.5/500mg - shortage of approximately 36 tablets;
3	Tussionex - shortage of approximately 5,560 cc's;
4	Promethazine with Codeine - shortage of approximately 51,424 cc's;
5	Promethazine VC with Codeine - shortage of approximately 7,580 cc's;
6	Hydrocodone/Apap 5/500mg - shortage of approximately 45 tablets;
7	Hydrocodone/Apap 10/325mg - shortage of approximately 400 tablets;
8	Hydrocodone/Apap 10/500mg - shortage of approximately 2,373 tablets;
9	Hydrocodone/Apap 10/660mg - shortage of approximately 148 tablets;
10	Hydrocodone with Guaifenesin - shortage of approximately 500 cc's;
11	Lorcet Plus - shortage of approximately 22 tablets;
12	Clonazepam - shortage of approximately 516 tablets;
13	Alprazolam 1mg - shortage of approximately 494 tablets;
14	Alprazolam .5 mg - shortage of approximately 132 tablets; and,
15	Diazepam 10mg - shortage of approximately 440 tablets.
16	28. In a wholly separate incident, on or about February 21, 2006, Respondent
17	was cited for petty theft pursuant to Penal Code section 488, for unlawfully taking property from
. 18	a Von's grocery store. In Case No. S202209, entitled People v. Sean Albert Gutierrez, filed in
19	San Diego Superior Court, South County Division on May 16, 2006, Respondent was charged
20	with violating Penal Code section 484 (theft) based on the incident at Von's. On or about May
21	26, 2006, Respondent pled guilty to violating Penal Code section 484, a misdemeanor.
22	FIRST CAUSE FOR DISCIPLINE
23	(Unprofessional Conduct - Theft of Drugs)
24	29. Paragraphs 1 though 28 are incorporated herein as though fully set forth.
25	Respondent is subject to discipline for unprofessional conduct pursuant to Business and
26	Professions Code section 4301(f) in that he committed acts involving moral turpitude,
27	dishonesty, fraud, deceit or corruption. Specifically, Respondent stole controlled substances
28	and/or dangerous drugs from Long's pharmacy while employed there as a pharmacy technician.
	9

1	SECOND CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct - Violation of Laws Regulating Controlled Substances)
3	30. Paragraphs 1 though 28 are incorporated herein as though fully set forth.
4	Respondent is subject to discipline for unprofessional conduct pursuant to Business and
5	Professions Code section 4301(j) in that he violated the statutes of the state regulating controlled
6	substances and dangerous drugs. Specifically, Respondent: (1) was in possession of various
7 .	controlled substances without a prescription in violation of Business and Professions Code
8	section 4060; (2) prescribed, administered or furnished himself with various controlled
9	substances and/or dangerous drugs without a prescription in violation of Business and
10	Professions Code section 4059 and Health and Safety Code section 11170; (3) adulterated drugs
11	in violation of Health and Safety Code section 111300; (4) obtained controlled substances by
12	fraud, deceit, misrepresentation in violation of Health and Safety Code section 11173(a); (5)
13	possessed controlled substances without a prescription in violation of Health and Safety Code
14	section 11350(a); and, (6) possessed controlled substances without a prescription in violation of
15	Health and Safety Code section 11377(a), as detailed in paragraphs 22 through 28.
16	THIRD CAUSE FOR DISCIPLINE
17	(Unprofessional Conduct - Self-Administration of Controlled Substances)
18	31. Paragraphs 1 though 28 are incorporated herein as though fully set forth.
19	Respondent is subject to discipline for unprofessional conduct pursuant to Business and
20	Professions Code section 4301(h) in that he administered or used a dangerous drug or controlled
21	substance in a manner dangerous or injurious to himself, to any other person or to the public, or
22	to an extent that the use impaired his ability to conduct with safety to the public the practice
23	authorized by his license.
24	FOURTH CAUSE FOR DISCIPLINE
25	(Unprofessional Conduct - Dispensing While Under the Influence)
26	32. Paragraphs 1 though 28 are incorporated herein as though fully set forth.
27	Respondent is subject to discipline for unprofessional conduct pursuant to Business and
28	Professions Code section 4301(j) in that he violated the statutes of the state regulating controlled

1	substances and dangerous drugs. Specifically, Respondent, while on duty as a pharmacy
2	technician, sold, dispensed or compounded drugs while under the influence of a dangerous drug
3	in violation of Business and Professions Code section 4327.
4	FIFTH CAUSE FOR DISCIPLINE
5	(Unprofessional Conduct - Theft of Cash)
6	33. Paragraphs 1 though 28 re incorporated herein as though fully set forth.
7	Respondent is subject to discipline for unprofessional conduct pursuant to Business and
8	Professions Code section 4301(f) in that he committed acts involving moral turpitude,
9	dishonesty, fraud, deceit or corruption. Specifically, Respondent stole cash money from Long's
10	on several occasions while employed there as a pharmacy technician.
11	SIXTH CAUSE FOR DISCIPLINE
12	(Unprofessional Conduct - Conviction of Crime)
13	34. Paragraphs 1 though 28 re incorporated herein as though fully set forth.
14	Respondent is subject to discipline for unprofessional conduct pursuant to Business and
15	Professions Code section 4301(1) in that he was convicted of a crime substantially related to the
16	qualifications, functions, and duties of a licensee. Specifically, Respondent pled guilty to
17	violating Penal Code section 484 (theft) for unlawfully taking property from a Von's grocery
18	store.
19	SEVENTH CAUSE FOR DISCIPLINE
20	(Unprofessional Conduct - Theft of Property of Another)
21	35. Paragraphs 1 though 28 re incorporated herein as though fully set forth.
22	Respondent is subject to discipline for unprofessional conduct pursuant to Business and
23	Professions Code section 4301(f) in that he committed acts involving moral turpitude,
24	dishonesty, fraud, deceit or corruption. Specifically, Respondent unlawfully took property from a
25	Von's grocery store and subsequently pled guilty to violating Penal Code section 484 (theft).
26	PRAYER
27	WHEREFORE, Complainant requests that a hearing be held on the matters herein
28	alleged, and that following the hearing, the Board of Pharmacy issue a decision:
	11

1.

1	1. Revoking or suspending Pharmacy Technician Number TCH 36449,
2	issued to Sean A. Gutierrez;
3	2. Ordering Sean A. Gutierrez to pay the Board of Pharmacy the reasonable
4	costs of the investigation and enforcement of this case, pursuant to Business and Professions
5	Code section 125.3; and,
6	3. Taking such other and further action as deemed necessary and proper.
7	
8	DATED: 11/7/07
9	
10	(ligina full
11	VIRGINIA HEROLD Executive Officer
12	Board of Pharmacy Department of Consumer Affairs
13	State of California Complainant
14	SD2007800308
15	80140390.2.wpd
16	
17	
18	
19	
20	
21	
22	
23	
24 25	
23 26	
20	
27 28	
	12
	17