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

In the Matter of the Accusation Against:

Case No. 3276

SARA HERNANDEZ 1805 Evelyn Circle

Colton, CA 92324

Original Pharmacy Technician Registration No. TCH 46353

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 April 29, 2010.

It is so ORDERED on March 30, 2010.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Benneth H. Scheel

KENNETH H. SCHELL Board President

By

1 2 3 4 5 6 7 8 9	EDMUND G. BROWN JR. Attorney General of California GREGORY J. SALUTE Supervising Deputy Attorney General DESIREE TULLENERS Deputy Attorney General State Bar No. 157464 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2578 Facsimile: (213) 897-2578 Facsimile: (213) 897-2804 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against: Case No. 3276		
12 13	SARA ELAINE GARCIASTIPULATED SETTLEMENT ANDaka SARA ELAINE HERNANDEZDISCIPLINARY ORDER1805 Evelyn CircleColton, CA 92324		
14	Pharmacy Technician Registration No. TCH		
15	46353		
16	Respondent.		
• 17		 -	
18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-		
19	entitled proceedings that the following matters are true:		
20	PARTIES		
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.		
22	She brought this action solely in her official capacity and is represented in this matter by Edmund		
23	G. Brown Jr., Attorney General of the State of California, by Desiree Tulleners, Deputy Attorney		
24	General.		
25	2. Respondent Sara Elaine Garcia aka Sara Elaine Hernandez (Respondent) is		
26	representing herself in this proceeding, and has chosen not to exercise her right to be represented		
27	by counsel.		
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	STIPULATED SETTLEMENT (3276)		

3. On or about July 25, 2003, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 46353 to Respondent. The registration will expire on March 31, 2011, unless renewed.

JURISDICTION

4. Accusation No. 3276 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 4, 2009. Respondent timely has not yet filed her Notice of Defense contesting the Accusation, but chooses instead to enter into this stipulation. A copy of Accusation No. 3276 is attached as Exhibit A, and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3276. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

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8. Respondent admits the truth of each and every charge and allegation in Accusation
No. 3276.

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9. Respondent agrees that her Pharmacy Technician Registration is subject to discipline and she agrees to be bound by the Board of Pharmacy (Board)'s imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter. 13

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

This Stipulated Settlement and Disciplinary Order is intended by the parties to be an 12. 17 integrated writing representing the complete, final, and exclusive embodiment of their agreement. 18 It supersedes any and all prior or contemporaneous agreements, understandings, discussions, 19 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary 20 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a 21 writing executed by an authorized representative of each of the parties. 22

In consideration of the foregoing admissions and stipulations, the parties agree that 13. 23 the Board may, without further notice or formal proceeding, issue and enter the following 24 Disciplinary Order: 25

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STIPULATED SETTLEMENT (3276)

DISCIPLINARY ORDER

2	IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 46353
3	issued to Respondent Sara Elaine Garcia aka Sara Elaine Hernandez is revoked.
4	The revocation of Respondent's Pharmacy Technician Registration shall constitute the
5	imposition of discipline against Respondent. This stipulation constitutes a record of the discipline
6	and shall become a part of Respondent's license history with the Board.
7 ·	Respondent shall lose all rights and privileges as a Pharmacy Technician in California
8	as of the effective date of the Board's Decision and Order.
9	Respondent shall cause to be delivered to the Board her license, license certificate(s),
10	on or before the effective date of the Decision and Order.
11	Respondent may not apply, reapply, or petition for any licensure or registration of the
12	Board for three (3) years from the effective date of the Decision and Order.
13	Respondent understands and agrees that if she ever applies for licensure or petitions
14	for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement.
15	Respondent must comply with all laws, regulations and procedures for licensure in effect at the
16	time an application or petition is filed, and all the charges and allegations contained in Accusation
17	No. 3276 shall be deemed to be true, correct and admitted by Respondent when the Board
18	determines whether to grant or deny the application or petition.
19	Should Respondent ever apply or reapply for a new license or certification, or petition
20	for reinstatement of a license, by any other health care licensing agency in the State of California,
21	all of the charges and allegations contained in Accusation No. 3276 shall be deemed to be true,
22	correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
23	proceeding seeking to deny or restrict licensure.
24	Respondent shall pay the Board its costs of investigation and enforcement in the
25	amount of \$2,702, prior to issuance of a new or reinstated license
26	ACCEPTANCE
27	I have carefully read the Stipulated Settlement and Disciplinary Order. I understand
28	the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into
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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 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. Respectfully Submitted, Dated EDMUND G. BROWN JR. Attorney General of California GREGORY J. SALUTE 13. Supervising Deputy Attorney General SIREE TULLENERS Deputy Attorney General Attorneys for Complainant

STIPULATED SETTLEMENT (3276)

Exhibit A

Accusation No. 3276

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	EDMUND G. BROWN JR., Attorney General of the State of California
2	GREGORY J. SALUTE Supervising Deputy Attorney General
. 3	DESIREE TULLENERS, State Bar No. 157464 Deputy Attorney General
4 ·	
5	Los Angeles, CA 90013
6	Telephone: (213) 897-2578 Facsimile: (213) 897-2804
7.	Attorneys for Complainant
8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
• 10	STATE OF CALIFORNIA
	In the Matter of the Accusation Against: Case No. 3276
12	SARA ELAINE GARCIA A C C U S A T I O N
13	a.k.a SARA ELAINE HERNANDEZ 1805 Evelyn Circle
· · · ·	Colton, CA 92324
14	Pharmacy Technician Registration
15	No. TCH 46353
16	Respondent.
17	
18	Complainant alleges:
19	PARTIES
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official
21	capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
22	Affairs.
23	2. On or about July 25, 2003, the Board issued Pharmacy Technician
24	Registration No. TCH 46353 to Sara Elaine Garcia also known as Sara Elaine Hernandez
. 25	(Respondent). The Pharmacy Technician Registration will expire on March 31, 2011, unless
26.	renewed
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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the
 following laws. All section references are to the Business and Professions Code unless otherwise
 indicated.

4. Business and Professions Code section 118, subdivision (b) provides that
the suspension, expiration, or forfeiture by operation of law of a license does not deprive the
Board of authority or jurisdiction to institute or continue with disciplinary action against the
license or to order suspension or revocation of the license, during the period within which the
certificate may be renewed, restored, reissued or reinstated.

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.5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a
licensee, a board may suspend or revoke a license on the ground that the licensee has been
convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any
authority to discipline a licensee for conviction of a crime that is independent of the authority
granted under subdivision (a) only if the crime is substantially related to the qualifications,
functions, or duties of the business or profession for which the licensee's license was issued.

(c) 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."

6. Section 4300 of the Code provides, in pertinent part, that every license
issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4301 of the Code states:

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"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:.

(a) Gross immorality.

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

(1) The conviction of a crime substantially related to the qualifications, functions, 10and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 11 (commencing with Section 801) of Title 21 of the United States Code regulating controlled 12 substances or of a violation of the statutes of this state regulating controlled substances or 13 14 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. 15 The board may inquire into the circumstances surrounding the commission of the crime, in order 16 . 17 to fix the degree of discipline or, in the case of a conviction not involving controlled substances 18 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 19 or a conviction following a plea of nolo contendere is deemed to be a conviction within the 2021 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 22 23 made suspending the imposition of sentence, irrespective of a subsequent order under Section 24 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a 25 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information. 26 or indictment."

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(p) Actions or conduct that wold have warranted denial of a license."

8. Section 125.3 of the Code states, in pertinent part, that the Board may
 request the administrative law judge to direct a licentiate found to have committed a violation or
 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
 and enforcement of the case.

9. Penal Code section 211 states:

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6 "Robbery is the felonious taking of personal property in the possession of another,
7 from his person or immediate presence, and against his will, accomplished by means of force or
8 fear."

9 10. California Code of Regulations, title 16, section 1770, states, in pertinent 10 part: "For the purpose of denial, suspension, or revocation of a personal or facility license 11 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a 12 crime or act shall be considered substantially related to the qualifications, functions or duties of a 13 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a 14 licensee or registrant to perform the functions authorized by his license or registration in a 15 manner consistent with the public health, safety, or welfare."

FIRST CAUSE FOR DISCIPLINE

(*Conviction of a Substantially Related Crime*)

18 11. Respondent is subject to disciplinary action under sections 4300, 4301,
19 subdivision (1), and 490, of the Code, in conjunction with California Code of Regulations, title
20 16, section 1770, in that, Respondent was convicted of a crime which is substantially related to
21 the qualifications, functions or duties of a pharmacy technician, as follows:

12. On or about May 21, 2007, Respondent was convicted following her plea
of nolo contendere to one count of violating Penal Code section 211 [robbery, 2^{ad} degree], a
felony, in the criminal proceeding entitled *The People of the State of California v. Sara Elaine Hernundez* (Super, Ct. San Bernardino County, 2007, No. FSB053321). Respondent was
sentenced to state prison for 2 years with credit for 488 days already served and 244 days for
conduct. As of May 21, 2007, Respondent's sentence was deemed served in full pursuant to
Penal Code section 1170(A)(3), and she was placed on parole.

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1 13. The circumstances surrounding the conviction are that on or about
 2 November 23, 2005, Respondent did unlawfully, and by means of criminal threats, force and
 3 fear, take personal property from T. E.¹ A handgun was used during the commission of the
 4 crime.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Gross Immorality)

Respondent is subject to disciplinary action under Code sections 4300 and
4301. subdivision (a), of the Code, on the grounds of unprofessional conduct, in that, Respondent
committed grossly immoral acts, as set forth below. Any act, in and of itself, is an independent
ground for disciplinary action against Respondent.

a. On or about September 10, 2005, in San Bernardino County, Respondent
was an accomplice to an individual who unlawfully entered an inhabited dwelling and committed
burglary by stealing cash, keys, and credit cards from the occupant's purse, in violation of Penal
Code sections 459 [burglary], and 460(a) [burglary, 1st degree]; was in possession of stolen
property following those crimes in violation of Penal Code section 462(a) [burglary of inhabited
dwelling]; and then evaded police in a vehicle fleeing from the scene of the crimes in violation of
Vehicle Code section 2800.2(a) [felony evading].

b. On or about November 23, 2005, in San Bernardino County, Respondent
attempted to dissuade the victim of the above referenced crime from giving testimony against her
by force or threat in violation of Penal Code section 136.1(c)(1); and

c. On or about November 23, 2005, in San Bernardino County, Respondent
participated in a car-jacking where an individual, 'f'. E., was kidnapped [Penal Code section
207(a) - kidnapping -], robbed [Penal Code section 211 - robbery, 2nd degree], criminally
threatened [Penal Code section 422 - criminal threats], and a handgun was used in the
commission of the crimes [Penal Code section 12022(a) special circumstance - knew principal

1. The victim is identified by initials. The name of the victim will be provided, if requested, during discovery.

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. 1	armed with a firearm during commission of crimes]. Each of the acts is categorized as a serious	
2	felony	
·	THIRD CAUSE FOR DISCIPLINE	
· 4	(Unprofessional Conduct - Moral Turpitude)	•
5	15. Respondent is subject to disciplinary action under sections 4300 and 4301,	•
6	subdivision (f) of the Code, on the grounds of unprofessional conduct, in that, Respondent	
7.	committed acts of moral turpitude, as set forth above in paragraphs 14 (a), (b) and (c). Any act,	
8	in and of itself, is an independent ground for disciplinary action against Respondent.	
9	FOURTH CAUSE FOR DISCIPLINE	
10	(Unprofessional Conduct - Conduct Warranting Denial of a License)	· ·
13	16. Respondent is subject to disciplinary action under section 4300 and 4301,	
12	subdivisions (p), of the Code, on the grounds of unprofessional conduct, in that, Respondent	
13	committed conduct warranting denial of a license, as set forth above in paragraphs 14 (a), (b) and	
14	(c). Any conduct, in and of itself, is an independent ground for disciplinary action against	
15	Respondent.	
16	PRAYER	· ·
17	WHEREFORE. Complainant requests that a hearing be held on the matters	•
18	herein alleged, and that following the hearing, the Board issue a decision:	
19	1. Revoking or suspending Pharmacy Technician Registration Number	
20	TCH 46353 issued to Sara Elaine Hernandez;	
21	2. Ordering Sara Elaine Hernandez to pay the Board the reasonable costs of	
22	the investigation and enforcement of this case, pursuant to Business and Professions Code	
23	section 125.3; and	
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Taking such other and further action as deemed necessary and proper. 3. DATED: 10/29/09 VIRGINIA HEROLD Executive Officer Board of Pharmacy State of California Complainant]]]4 2]