

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

In the Matter of the Statement of Issues Against:

Case No. 3284

ERIC RIVERA
21409 Weiser Avenue
Carson, CA 90745

Respondent.

DECISION AND ORDER

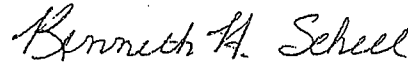
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 16, 2009.

It is so ORDERED on December 1, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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

Case No. 3284

12 **ERIC TURCUAN RIVERA**
13 **21409 Weiser Avenue**
Carson, Ca 90745
14 **Pharmacy Technician Applicant**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

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

18 PARTIES

19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
20 She brought this action solely in her official capacity and is represented in this matter by Edmund
21 G. Brown Jr., Attorney General of the State of California, by Thomas L. Rinaldi, Deputy
22 Attorney General.

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

25 3. On or about October 19, 2007, Respondent filed an application dated September 24,
26 2007, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

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JURISDICTION

4. Statement of Issues No. 3284 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on July 20, 2009. Respondent timely filed his Notice of Defense contesting the Statement of Issues. A copy of Statement of Issues No. 3284 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 3284. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 3284.

9. Respondent agrees that his Pharmacy Technician Applicant is subject to denial and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

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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 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent Eric Turcuan Rivera will be issued a Pharmacy Technician Registration that will be immediately revoked. The revocation will be stayed and the Respondent placed on three (3) years probation on the following terms and conditions.

1. Certification Prior to Resuming Work

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

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

9 Subject to the above restrictions, respondent may continue to own or hold an interest in any
10 licensed premises by the board in which he holds an interest at the time this decision becomes
11 effective unless otherwise specified in this order.

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

13 **2. Obey All Laws**

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

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

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

27 Failure to timely report any such occurrence shall be considered a violation of probation.
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3. Report to the Board

Respondent 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, respondent 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.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent 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.

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3284 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed

1 individual(s) has/have read the decision in case number 3284 and the terms and conditions
2 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
3 supervisor(s) submit timely acknowledgement(s) to the board.

4 If respondent works for or is employed by or through a pharmacy employment service,
5 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
6 of the terms and conditions of the decision in case number 3284 in advance of the respondent
7 commencing work at each pharmacy. A record of this notification must be provided to the board
8 upon request.

9 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
10 (15) days of respondent undertaking any new employment by or through a pharmacy employment
11 service, respondent shall cause his direct supervisor with the pharmacy employment service to
12 report to the board in writing acknowledging that he has read the decision in case number 3284
13 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
14 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

23 **7. Probation Monitoring Costs**

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

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1 **8. Status of Registration**

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

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

10 **9. License Surrender While on Probation/Suspension**

11 Following the effective date of this decision, should respondent cease work due to
12 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
13 respondent may tender his pharmacy technician registration to the board for surrender. The board
14 or its designee shall have the discretion whether to grant the request for surrender or take any
15 other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
16 registration, respondent will no longer be subject to the terms and conditions of probation. This
17 surrender constitutes a record of discipline and shall become a part of the respondent's license
18 history with the board.

19 Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician
20 registration to the board within ten (10) days of notification by the board that the surrender is
21 accepted. Respondent may not reapply for any license, permit, or registration from the board for
22 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
23 applicable to the license sought as of the date the application for that license is submitted to the
24 board.

25 **10. Notification of a Change in Name, Residence Address, Mailing Address or**
26 **Employment**

27 Respondent shall notify the board in writing within ten (10) days of any change of
28 employment. Said notification shall include the reasons for leaving, the address of the new

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

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

6 11. Tolling of Probation

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

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

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

21 "Cessation of work" means calendar month during which respondent is not
22 working for at least forty (40) hours as a pharmacy technician, as defined in Business
23 and Professions Code section 4115. "Resumption of work" means any calendar
24 month during which respondent is working as a pharmacy technician for at least forty
25 (40) hours as a pharmacy technician as defined by Business and Professions Code
26 section 4115.

27 12. Violation of Probation

28 If a respondent has not complied with any term or condition of probation, the board shall

1 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
2 all terms and conditions have been satisfied or the board has taken other action as deemed
3 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
4 to impose the penalty that was stayed.

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

12 **13. Completion of Probation**

13 Upon written notice by the board indicating successful completion of probation,
14 respondent's pharmacy technician registration will be fully restored.

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

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

23 **15. Random Drug Screening**

24 Respondent, at his own expense, shall participate in random testing, including but not
25 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
26 screening program as directed by the board or its designee. Respondent may be required to
27 participate in testing for the entire probation period and the frequency of testing will be
28 determined by the board or its designee. At all times respondent shall fully cooperate with the

1 board or its designee, and shall, when directed, submit to such tests and samples for the detection
2 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
3 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
4 of probation. Upon request of the board or its designee, respondent shall provide documentation
5 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
6 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
7 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
8 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
9 shall be considered a violation of probation and shall result in the automatic suspension of work
10 by respondent. Respondent may not resume work as a pharmacy technician until notified by the
11 board in writing.

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

20 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
21 Subject to the above restrictions, respondent may continue to own or hold an interest in any
22 licensed premises in which he holds an interest at the time this decision becomes effective unless
23 otherwise specified in this order.

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

25 **16. Work Site Monitor**

26 Within ten (10) days of the effective date of this decision, respondent shall identify a work
27 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
28 during working hours. Respondent shall be responsible for ensuring that the work site monitor

1 reports in writing to the board quarterly. Should the designated work site monitor determine at
2 any time during the probationary period that respondent has not maintained sobriety, he shall
3 notify the board immediately, either orally or in writing as directed. Should respondent change
4 employment, a new work site monitor must be designated, for prior approval by the board, within
5 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
6 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
7 considered a violation of probation.

8 **17. Abstain from Drugs and Alcohol Use**

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

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26 ACCEPTANCE

27 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
28 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this

1 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
2 to be bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: 9/4/09 Eric Rivera
5 ERIC TURCUAN RIVERA
6 Respondent

7 ENDORSEMENT

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

10 Dated: 9/18/09

11 Respectfully Submitted,
12 EDMUND G. BROWN JR.
13 Attorney General of California
14 KAREN B. CHAPPELLE
15 Supervising Deputy Attorney General

16 Thomas L. Rinaldi
17 THOMAS L. RINALDI
18 Deputy Attorney General
19 Attorneys for Complainant

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21 Stipulation.rtf
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Exhibit A

Statement of Issues No. 3284

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
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5 Los Angeles, CA 90013
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Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against,

Case No. 3284

13 **ERIC TURCUAN RIVERA**
21409 Weiser Avenue
14 Carson, Ca 90745

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

17 Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about October 19, 2007, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Eric Turcuan Rivera
24 (Respondent). On or about September 24, 2007, Eric Turcuan Rivera certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on August 29, 2008.

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JURISDICTION

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

5 4. Section 4301 of the Code states:

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

9 ...
10 "(j) The violation of any of the statutes of this state, or any other state, or of the United States
11 regulating controlled substances and dangerous drugs.

12 ...
13 5. Section 480 of the Code states:

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

16
17 "(3) Done any act which if done by a licentiate of the business or profession in question, would
18 be grounds for suspension or revocation of license.

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

22 6. Section 492 of the Code states:

23 "Notwithstanding any other provision of law, successful completion of any diversion
24 program under the Penal Code, or successful completion of an alcohol and drug problem
25 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
26 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
27 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
28 division, from taking disciplinary action against a licensee or from denying a license for

1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
2 record pertaining to an arrest.

3 "This section shall not be construed to apply to any drug diversion program operated by any
4 agency established under Division 2 (commencing with Section 500) of this code, or any
5 initiative act referred to in that division."

6 7. Health and Safety Code section 11377 provides in pertinent part:

7 (a) Except as authorized by law...every person who possesses any controlled substance, unless
8 upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in
9 this state, shall be punished by imprisonment in a county jail for a period of not more than one
10 year on in the state prison.

11 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

12 8. Methamphetamine is a Schedule II controlled substance as defined in Health and
13 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
14 Business and Professions Code section 4022.

15 **CAUSE FOR DENIAL OF APPLICATION**

16 (Possession of Controlled Substance)

17 9. Respondent's application is subject to denial under section 480(a)(3) in conjunction
18 with section 4301(j) for violation of Health and Safety Code section 11377 in that on or around
19 September 2, 2004, he was found to be in possession of a controlled substance, to wit,
20 Methamphetamine.

21 **PRAYER**

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

24 1. Denying the application of Eric Turcuan Rivera for a Pharmacy Technician
25 Registration;

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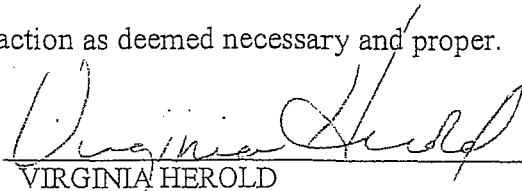
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2. Taking such other and further action as deemed necessary and proper.

DATED: 7/8/09



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

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statement of issues.rtf