

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

In the Matter of the Accusation Against:

Case No. 3407

**PATRICIA FERNANDEZ**

1969 Tate Street, #C104  
East Palo Alto, CA 94303

Pharmacy Technician License No. TCH 82566

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 January 28, 2010.

It is so ORDERED on December 29, 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 FRANK H. PACOE  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 3407

11 **PATRICIA FERNANDEZ**  
12 1969 Tate Street, Apt. C104  
13 East Palo Alto, CA 94303

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

14 **Pharmacy Technician License No. TCH**  
15 **82566**

16 Respondent.

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
19 proceeding 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 Justin R. Surber, Deputy Attorney  
24 General.

25 2. Patricia Fernandez (Respondent) is representing herself in this proceeding and has  
26 chosen not to exercise her right to be represented by counsel.

27 3. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician  
28 License No. TCH 82566 to Patricia Fernandez (Respondent). The was in full force and effect at

1 all times relevant to the charges brought in Accusation No. 3407 and will expire on June 30,  
2 2010, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3407 was filed before the Board of Pharmacy (Board), Department of  
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
6 statutorily required documents were properly served on Respondent on October 2, 2009.  
7 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation  
8 No. 3407 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in  
11 Accusation No. 3407. Respondent also has carefully read, and understands the effects of this  
12 Stipulated Surrender of License and Order.

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

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

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation  
24 No. 3407, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician  
25 License No. TCH 82566 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation she enables the Board to issue an  
27 order accepting the surrender of her Pharmacy Technician License without further process.

28 ///

CONTINGENCY

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

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

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

20       13. In consideration of the foregoing admissions and stipulations, the parties agree that  
21 the (Board) may, without further notice or formal proceeding, issue and enter the following  
22 Order:

ORDER

23  
24       IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 82566, issued to  
25 Respondent Patricia Fernandez is surrendered and accepted by the Board of Pharmacy.

26       14. The surrender of Respondent's Pharmacy Technician License and the acceptance of  
27 the surrendered license by the Board shall constitute the imposition of discipline against  
28

1 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
2 Respondent's license history with the Board.

3 15. Respondent shall lose all rights and privileges as a Pharmacy Technician in California  
4 as of the effective date of the Board's Decision and Order.

5 16. Respondent shall cause to be delivered to the Board both her wall license certificate  
6 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

7 17. If she ever applies for licensure or petitions for reinstatement in the State of  
8 California, the Board shall treat it as a new application for licensure. Respondent must comply  
9 with all the laws, regulations and procedures for licensure in effect at the time the application or  
10 petition is filed, and all of the charges and allegations contained in Accusation No. 3407 shall be  
11 deemed to be true, correct and admitted by Respondent when the Board determines whether to  
12 grant or deny the application or petition.

13 18. Should Respondent ever apply or reapply for a new license or certification, or petition  
14 for reinstatement of a license, by any other health care licensing agency in the State of California,  
15 all of the charges and allegations contained in Accusation, No. 3407 shall be deemed to be true,  
16 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other  
17 proceeding seeking to deny or restrict licensure.

18 19. In the event that Respondent applies for a new or reinstated license or certification  
19 from the Board, Respondent shall pay the Board's investigation and prosecution costs in the  
20 amount of \$3,389.50 prior to the Board issuing a new or reinstated license.

21 20. Respondent may not apply, reapply, or petition for any licensure or registration of the  
22 Board for three (3) years from the effective date of the Decision and Order.

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24  
25 ACCEPTANCE

26 I have carefully read the Stipulated Surrender of License and Order. I understand the  
27 stipulation and the effect it will have on my Pharmacy Technician License. I enter into this  
28

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

3  
4 DATED: 11-1-09

  
5 PATRICIA FERNANDEZ  
6 Respondent

7  
8 ENDORSEMENT

9 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
10 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

11 Dated: ~~October 15, 2009~~

11 11/6/2009

12 Respectfully submitted,

13 EDMUND G. BROWN JR.  
14 Attorney General of California  
15 FRANK H. PACOE  
16 Supervising Deputy Attorney General



17 JUSTIN R. SURBER  
18 Deputy Attorney General  
19 *Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 3407**

file copy  
sent 10/2/09 JHE

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUSTIN R. SURBER  
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6 Facsimile: (415) 703-5480  
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**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
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10 In the Matter of the Accusation Against:  
11  
12 **PATRICIA FERNANDEZ**  
1969 Tate Street, Apt. C104  
East Palo Alto, CA 94303  
13  
14 **Pharmacy Technician License No. TCH**  
**82566**  
15  
16 Respondent.

Case No. 3407

**A C C U S A T I O N**

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician  
23 License Number TCH 82566 to Patricia Fernandez (Respondent). The Pharmacy Technician  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on June 30, 2010, unless renewed.

26 ///  
27 ///  
28 ///



JURISDICTION

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 ("Code") unless otherwise indicated.

4. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

..."

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. 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:

"(a) Gross immorality.

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"(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.

..."

"(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.

..."

"(l) 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 evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

..."

1            "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
3 federal and state laws and regulations governing pharmacy, including regulations established by  
4 the board or by any other state or federal regulatory agency.

5            . . . ."  
6            6. Section 4324 of the Code states:

7            "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,  
8 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any  
9 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the  
10 state prison, or by imprisonment in the county jail for not more than one year."

11           7. Section 490 of the Code states:

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

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

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

26           "(d) The Legislature hereby finds and declares that the application of this section has been  
27 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
28 554, and that the holding in that case has placed a significant number of statutes and regulations

1 in question, resulting in potential harm to the consumers of California from licensees who have  
2 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
3 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
4 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not  
5 constitute a change to, but rather are declaratory of, existing law.

6 8. California Code of Regulations, title 16, section 1770, states:

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

### 13 DANGEROUS DRUGS

14 9. Section 4022 of the Code states:

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

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

19 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
20 by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled  
21 in with the designation of the practitioner licensed to use or order use of the device.

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

24 10. Flagyl is the brand name for metronidazole and is a dangerous drug as defined by  
25 section 4022 of the code.

26 11. Promethazine is a dangerous drug as defined by section 4022 of the code.

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1 COSTS

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

6 FACTUAL ALLEGATIONS

7 13. On June 20, 2008 The Board of Pharmacy (BoP) received a letter from Orriette  
8 Quandt, Director of Pharmacy Compliance, Longs Drugs Stores. The letter informed the BoP that  
9 Respondent had be terminated from Longs Drug Store #292 for theft, unauthorized discounts,  
10 under charging a fellow employee for merchandise, and typing a fraudulent prescription.

11 14. From about December 1, 2007 until June 2008 stole approximately \$1200 in  
12 merchandise from her employer, Longs Drugs. The stolen merchandise included the prescription  
13 medication promethazine. During this same time period, Respondent gave unauthorized  
14 discounts to a fellow employee and her personal friends. Respondent fraudulently approved a  
15 refill of the prescription drug Flagyl by using a co-worker's name. Respondent did not have a  
16 prescription for the refill but indicated she did.

17 15. On or about June 12, 2008 Respondent a signed statement in which she admitted  
18 stealing general merchandise, under charging a fellow employee for merchandise, stealing  
19 promethazine, and typing a fraudulent Flagyl prescription.

20 16. On or about June 12, 2008 Respondent admitted to police she stole over \$1200 in  
21 merchandise from Longs including promethazine.

22 17. On or about September 23, 2008, before Santa Clara County Superior Court, Case No.  
23 BB835072, Respondent was convicted on a plea of nolo contendere, of violating Penal Code  
24 sections 484-488, petty theft. The circumstances are described in paragraph 14, above.

25 18. On or about May 5, 2009, before Alameda County Superior Court, Case No. 231746-9,  
26 Respondent was convicted on a plea of nolo contendere, of violating Vehicle Code section  
27 23152(b), driving a vehicle with a blood alcohol level of .08 percent or higher. The  
28 circumstances leading to Respondent's conviction are as follows:

1 19. On or November 16, 2008, Respondent was driving northbound on interstate 880.  
2 Respondent was pulled over by the California Highway Patrol after she was observed swerving  
3 both within and in-between lanes. The California Patrol Officer smelled a strong odor of  
4 alcoholic beverage emitting from respondent's vehicle. Respondent admitted she drank both beer  
5 and wine earlier. Respondent was unable to perform field sobriety tests as explained and  
6 demonstrated. A preliminary alcohol screening device test revealed Respondent had BAC of  
7 .137/.144 percent. Respondent was arrested and an implied consent breath test revealed  
8 Respondent's BAC was .12 percent.

9 FIRST CAUSE FOR DISCIPLINE

10 (Gross Immorality)

11 20. Respondent is subject to disciplinary action under section 4301(a) of the code in that  
12 Respondent was involved in acts of gross immorality. The circumstances are described in  
13 paragraph 12, above.

14 SECOND CAUSE FOR DISCIPLINE

15 (Forged Prescription)

16 21. Respondent is subject to disciplinary action under section 4301(o) and (j) of the code  
17 in that Respondent violated Section 4324 of the code by forging a prescription for Flagyl. The  
18 circumstances are described in paragraph 12, above.

19 THIRD CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct- moral turpitude, dishonesty, deceit)

21 22. Respondent is subject to disciplinary action under section 4301(f) of the code in that  
22 Respondent was involved in acts of moral turpitude, dishonesty, or deceit. The circumstances are  
23 described in paragraph 12, above.

24 FOURTH CAUSE FOR DISCIPLINE

25 (Conviction)

26 23. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the  
27 code in that Respondent was involved convicted of a crime that is substantially related to the  
28

1 duties, functions, or qualifications of a Pharmacy Technician. The circumstances are described in  
2 paragraph 17, above.

3 FIFTH CAUSE FOR DISCIPLINE

4 (Dangerous or Injurious Use of Alcohol)

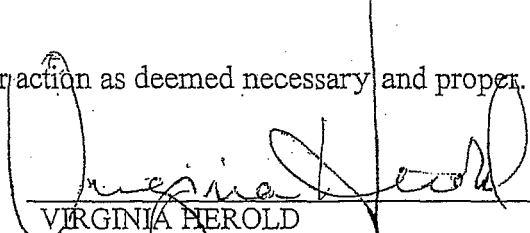
5 24. Respondent is subject to disciplinary action under section 4301(h) of the code in that  
6 Respondent used alcohol to an extent that dangerous or injurious to herself. The circumstances  
7 are described in paragraph 18-19, above.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician License Number TCH 82566, issued  
12 to Patricia Fernandez Patricia Fernandez.
- 13 2. Ordering Patricia Fernandez to pay the Board of Pharmacy the reasonable costs of the  
14 investigation and enforcement of this case, pursuant to Business and Professions Code section  
15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: 9/29/09

18   
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

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