

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

In the Matter of the Accusation Against:

Case No. 3486

JAVIER M. VARELA
3796 Palm Drive, Apt. A
Desert Shores, CA 92274

Pharmacy Technician License No. TCH 61270

Respondent.

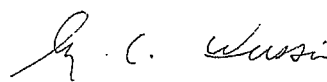
DECISION AND ORDER

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 5, 2010.

It is so ORDERED on July 6, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
110 West "A" Street, Suite 1100
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **JAVIER M. VARELA**
3796 Palm Drive, Apt. A
14 Desert Shores, CA 92274
15 **Pharmacy Technician Registration No. TCH**
61270
16
17 Respondent.

Case No. 3486

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

18
19 In the interest of a prompt and speedy resolution of this matter, consistent with the public
20 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
21 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
22 submitted to the Board for approval and adoption as the final disposition of the Accusation.

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Edmund
26 G. Brown Jr., Attorney General of the State of California, by Diane de Kervor, Deputy Attorney
27 General.

1 CULPABILITY

2 8. Respondent understands that the charges and allegations in Accusation No. 3486, if
3 proven at a hearing, constitute cause for imposing discipline upon his Pharmacy Technician
4 Registration.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation and that those charges constitute cause for discipline.
8 Respondent hereby gives up his right to contest that cause for discipline exists based on those
9 charges.

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

12 RESERVATION

13 11. The admissions made by Respondent herein are only for the purposes of this
14 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
15 licensing agency is involved, and shall not be admissible in any other criminal or civil
16 proceeding.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
19 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
20 communicate directly with the Board regarding this stipulation and surrender, without notice to or
21 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
22 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
23 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
24 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
25 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
26 be disqualified from further action by having considered this matter.

619-645-2061


1 and allegations contained in Accusation No. 3486 shall be deemed to be true, correct and
2 admitted by Respondent when the Board determines whether to grant or deny the petition.

3 20. Should Respondent ever apply or reapply for a new license or certification, or petition
4 for reinstatement of a license, by any other health care licensing agency in the State of California,
5 all of the charges and allegations contained in Accusation No. 3486 shall be deemed to be true,
6 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
7 proceeding seeking to deny or restrict licensure.

8 21. Respondent shall pay the Board its costs of investigation and enforcement in the
9 amount of \$1,832.50 prior to issuance of a new or reinstated license.

10 ACCEPTANCE

11 I have carefully read the Stipulated Surrender of License and Order. I understand the
12 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this
13 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
14 be bound by the Decision and Order of the Board of Pharmacy.

15 DATED: 5-8-10 
16 JAVIER M. VARELA, Respondent.

17 ENDORSEMENT

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

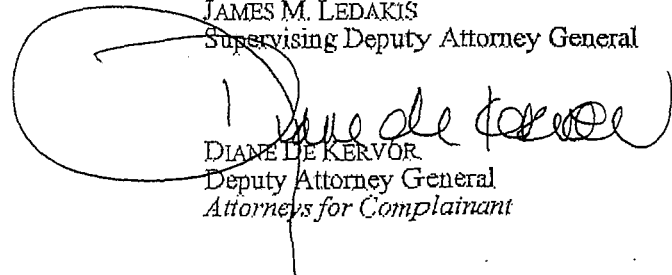
20 Dated: May 10 2010 Respectfully submitted,
21 EDMUND G. BROWN JR.
22 Attorney General of California
23 JAMES M. LEDAKIS
24 Supervising Deputy Attorney General
25 
26 DIANE DE KERVOR
27 Deputy Attorney General
28 Attorneys for Complainant

Exhibit A

Accusation No. 3486

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR, State Bar No. 174721
Deputy Attorney General
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11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3486

14 JAVIER M. VARELA aka JAVIER MAURICIO
15 VARELA FELIX aka JAVIER MAURICIO
VARELA-FELIX
16 3796 Palm Dr., Apt. A
Desert Shores, CA 92274

A C C U S A T I O N

17 Pharmacy Technician Registration No. TCH 61270

18 Respondent.

19
20 Complainant alleges:

21 PARTIES

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

24 2. On or about February 24, 2005, the Board of Pharmacy issued Pharmacy
25 Technician Registration Number TCH 61270 to Javier M. Varela (Respondent). The Pharmacy
26 Technician Registration will expire on December 31, 2010, unless renewed.

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8. Section 4022 of the Code states

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

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

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

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

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. Section 4300 of the Code states that "(a) Every license issued may be suspended or revoked."

11. 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.

///

1 (h) The administering to oneself, of any controlled substance, or the use
2 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to
3 be dangerous or injurious to oneself, to a person holding a license under this
4 chapter, or to any other person or to the public, or to the extent that the use impairs
5 the ability of the person to conduct with safety to the public the practice authorized by
6 the license.

7
8 (k) The conviction of more than one misdemeanor or any felony involving
9 the use, consumption, or self administration of any dangerous drug or alcoholic
10 beverage, or any combination of those substances.

11 (l) The conviction of a crime substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. The record of conviction of a
13 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
14 States Code regulating controlled substances or of a violation of the statutes of this
15 state regulating controlled substances or dangerous drugs shall be conclusive
16 evidence of unprofessional conduct. In all other cases, the record of conviction shall
17 be conclusive evidence only of the fact that the conviction occurred. The board may
18 inquire into the circumstances surrounding the commission of the crime, in order to
19 fix the degree of discipline or, in the case of a conviction not involving controlled
20 substances or dangerous drugs, to determine if the conviction is of an offense
21 substantially related to the qualifications, functions, and duties of a licensee under this
22 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
23 contendere is deemed to be a conviction within the meaning of this provision. . . .

24 12. California Code of Regulations, title 16, section 1769 states, in
25 pertinent part:

26 (b) When considering the suspension or revocation of a facility or a personal
27 license on the ground that the licensee or the registrant has been convicted of a crime,
28 the board, in evaluating the rehabilitation of such person and his present eligibility for
a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee. (5) Evidence,
if any, of rehabilitation submitted by the licensee.

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

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 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 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 manner consistent with the
public health, safety, or welfare.

1 also found to be in possession of 28.7 grams of marijuana and \$440.62 in cash. The police
2 came and arrested Respondent for hit and run, driving under the influence, and sale of
3 marijuana.

4 18. On the plea form, Respondent admitted that the facts on the police report
5 show enough to convict me of DUI with injury. I did drive while under the influence of alcohol
6 and while doing so committed a vehicle code violation which in turn caused injury to J.D. I
7 subsequently left the scene of the crime without doing as I was required to do pursuant to the
8 vehicle code.

9 19. On May 1, 2008, Respondent was sentenced to 90 days in jail, three years
10 probation under certain terms and conditions, including a first time offender alcohol program, a
11 12 month license suspension, \$2,725.00 in fines and fees, and restitution in an amount to be
12 determined.

13 SECOND CAUSE FOR DISCIPLINE

14 **(March 20, 2008 Criminal Conviction –**
15 **Driving on a Suspended License on November 6, 2007)**

16 20. Grounds exist to revoke Respondent's license pursuant to Code section
17 4300, section 4301, subdivisions (f) and (l), as well as 490 and 493 for commission of an act
18 involving moral turpitude and dishonesty, and a criminal conviction that is substantially related to
19 the qualifications, functions, and duties of a Pharmacy Technician. On March 20, 2008, in a case
20 entitled People vs. Javier Mauricio Varela Felix (Santa Barbara Superior Court Case No.
21 1255498), Respondent was convicted by a plea of no contest Vehicle Code section 14601.1(a)
22 (driving on a suspended license), a misdemeanor.

23 21. The facts and circumstances surrounding this cause for discipline are as
24 follows: On November 6, 2007, Respondent was stopped when he drove through a stop sign.
25 Respondent informed the officer at that time that his license was suspended. A burned marijuana
26 cigarette and a useable amount of marijuana was found in the ash tray of the car. Respondent was
27 cited for driving on a suspended license, failing to stop, and possession of marijuana while
28 driving.

1 the bike racks on campus at the University of California Santa Barbara. Respondent admitted to
2 the police that he had borrowed the bolt cutters, had cut the locks on two of the bikes, and that he
3 drove onto campus where each planned to take a bike to ride.

4 28. On August 8, 2008, Respondent was sentenced to 45 days in jail and \$145
5 in fines and fees.

6 PRAYER


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

9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 61270,
10 issued to Javier M. Varela.

11 2. Ordering Javier M. Varela to pay the Board of Pharmacy the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3.

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: 4/7/10

16
17 
18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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