## 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

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Ву

STANLEY C. WEISSER Board President

1	Edmund G. Brown Jr.	
2	Attorney General of California JAMES M. LEDAKIS	
3	Supervising Deputy Attorney General DIANE DE KERVOR	
4	Deputy Attorney General State Bar No. 174721	
5	110 West "A" Street, Suite 1100 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2611 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9	BOARD OF	RE-THE PHARMACY
10		CONSUMER AFFAIRS CALIFORNIA
11		
12	In the Matter of the Accusation Against:	Case No. 3486
13	JAVIER M. VARELA 3796 Palm Drive, Apt. A	
14	Desert Shores, CA 92274	STIPULATED SURRENDER OF LICENSE AND ORDER
15	Pharmacy Technician Registration No. TCH 61270	
16	Respondent.	
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19	In the interest of a prompt and speedy reso	lution of this matter, consistent with the public
20	interest and the responsibility of the Board of Ph	armacy of the Department of Consumer Affairs
21	the parties hereby agree to the following Stipulat	ed Surrender of License and Order which will be
22	submitted to the Board for approval and adoption	n as the final disposition of the Accusation.
23	PAR	TIES
24	1. Virginia Herold (Complainant) is the	e Executive Officer of the Board of Pharmacy.
25	She brought this action solely in her official capa	acity and is represented in this matter by Edmund
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	G. Brown Jr., Attorney General of the State of C	alifornia, by Diane de Kervor, Deputy Attorney
27	G. Brown Jr., Attorney General of the State of C General.	alifornia, by Diane de Kervor, Deputy Attorney
		alifornia, by Diane de Kervor, Deputy Attorney
27	General.	alifornia, by Diane de Kervor, Deputy Attorney

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2. Javier M. Varela (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about February 24, 2005, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 61270 to Respondent. The Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 3486 and will expire on December 31, 2010, unless renewed.

#### **JURISDICTION**

4. Accusation No. 3486 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 April 14, 2010.
Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
No. 3486 is attached as exhibit A and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, and understands the charges and allegations in
15 Accusation No. 3486. Respondent also has carefully read, and understands the effects of this
16 Stipulated Surrender of License and Order.

Respondent is fully aware of his 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
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.

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

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

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

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

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#### ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 61270, issued to Respondent Javier M. Varela is surrendered and accepted by the Board of Pharmacy.

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

19 17. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
20 as of the effective date of the Board's Decision and Order.

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

19. Respondent fully understands and agrees that if he ever files an application for
licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new
application for licensure. Respondent may not apply for licensure for three years from the date of
the Board's decision. Respondent must comply with all the laws, regulations and procedures for
reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges

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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: 102010 Respectfully submitted,
21	EDMUND G. BROWN JR.
22	Attorney General of California JAMES M. LEDAKIS
23	Supervising Deputy Attorney General
24	Jule all taken
25	DIANE DE KERVOR Deputy Attorney General Attorneys for Complainant
26	Autorneys for Comprament
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Stimulated Surronder of Licence

# Exhibit A

Accusation No. 3486

1 2 3 4 5 6	<ul> <li>EDMUND G. BROWN JR., Attorney General of the State of California</li> <li>JAMES M. LEDAKIS Supervising Deputy Attorney General</li> <li>DIANE DE KERVOR, State Bar No. 174721 Deputy Attorney General</li> <li>110 West "A" Street, Suite 1100 San Diego, CA 92101</li> <li>P.O. Box 85266 San Diego, CA 92186-5266</li> </ul>
7	Telephone: (619) 645-2611 Facsimile: (619) 645-2061
_8	Attorneys for Complainant
9	
10	BEFORE THE
11	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
12	STATE OF CALIFORNIA
13	In the Matter of the Accusation Against:
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
17	Pharmacy Technician Registration No. TCH 61270
18	Réspondent.
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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1	JURISDICTION AND STATUTORY PROVISIONS
. 2	3. This Accusation is brought before the Board of Pharmacy (Board),
3	Department of Consumer Affairs, under the authority of the following laws. All section
4	references are to the Business and Professions Code unless otherwise indicated.
5	4. Code section 118, subdivision (b), states, in pertinent part, that the
6	expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
7	action during the period within which the license may be renewed, restored, reissued or
_8_	reinstated.
9	5. Code section 482 states:
10 11	Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
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12 13	(b) Considering suspension or revocation of a license under Section 490.
13	Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.
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16	6. Section 490 of the Code states, in pertinent part:
17	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. A conviction within
18	the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere
19 20	7. Code section 493 states:
20 21	Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to
22	suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted
23	of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive
24	evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order
25	to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
26	As used in this section, 'license' includes 'certificate,' permit,' 'authority,'
27	and 'registration.'
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1	8. Section 4022 of the Code states
2	"Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in humans or animals, and includes the following:
3 4	(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
5	(b) Any device that bears the statement: "Caution: federal law restricts this
6	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.
7	(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	9. Section 4060 of the Code states:
.10	No person shall possess any controlled substance, except that furnished to a
11	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
12	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
13	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
14	shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
15 16	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.
17 18	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.
19	10. Section 4300 of the Code states that "(a) Every license issued may be
20	suspended or revoked."
21	11. Section 4301 of the Code states:
22	The board shall take action against any holder of a license who is guilty of
23	unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
24	not limited to, any of the following:
25	(f) The commission of any act involving moral turpitude, dishonesty,
26	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.
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(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.

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

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or 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. 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....

12. California Code of Regulations, title 16, section 1769 states, in

pertinent part:

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

(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	<u>COST RECOVERY</u>	
2	14. Section 125.3 of the Code states, in pertinent part, that the Board	
3	may request the administrative law judge to direct a licentiate found to have committed	
4	a violation or violations of the licensing act to pay a sum not to exceed the reasonable cost	
5	of the investigation and enforcement of the case.	
6	DRUG	
7	15. Marijuana is a Schedule I controlled substance as designated by Health and	
8	Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &	
9	Professions Code section 4022.	
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11	FIRST CAUSE FOR DISCIPLINE	
12	(March 20, 2008 Criminal Convictions - Felony Driving Under the Influence With Injury and Felony Hit and Run on November 18, 2007)	
13	16. Grounds exist to revoke Respondent's license pursuant to Code section	
14	4300, section 4301, subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic	1
15	beverages to an extent or in a manner as to be dangerous to himself or others and a criminal	I
16	conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy	I
17	Technician. On March 20, 2008, in a case entitled People vs. Javier Mauricio Varela Felix (Santa	
18	Barbara Superior Court Case No. 1255878), Respondent was convicted by a plea of no contest to	
19	a violation of Vehicle Code Sections 23153(a) (driving under the influence of alcohol with	
20	injury), a felony, and 20001(a) (hit and run), a felony.	
21	17. The facts and circumstances surrounding this cause for discipline are	
22	as follows: On November 18, 2007 Respondent rear ended a car that was stopped at a stop	
23	light with two women and three small children in it. Respondent admitted to the victim that	
24	he had been drinking, that he was drunk, and then he drove away. The victim chased him	
25	in her car, blocked him in a parking lot, and called the police. One of the passengers in the	
26	car suffered minor injuries in the accident. A blood test revealed that Respondent was	
27	driving under the influence of alcohol with a blood alcohol level of .12%. Respondent was	
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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. 1
.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	SLEOND CAUSE FOR DISCH LINE
15	(March 20, 2008 Criminal Conviction – 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.
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1	22. On March 20, 2008, Respondent was sentenced to 15 days in jail and a
2	fine.
3	THIRD CAUSE FOR DISCIPLINE
4	(March 20, 2008 Criminal Conviction -
5	Driving on a Suspended License on November 10, 2007)
6	23. Grounds exist to revoke Respondent's license pursuant to Code section
7	4300, section 4301, subdivisions (f) and (l), as well as 490 and 493 for commission of an act
8	involving moral turpitude and dishonesty, and a criminal conviction that is substantially related to
9	the qualifications, functions, and duties of a Pharmacy Technician. On March 20, 2008, in a case
10	entitled People vs. Javier Mauricio Varela Felix (Santa Barbara Superior Court Case No.
11	125567), Respondent was convicted by a plea of no contest to Vehicle Code section 14601.1(a)
12	(driving on a suspended license), a misdemeanor.
13	24. The facts and circumstances surrounding this cause for discipline are as
14	follows: On November 10, 2007, Respondent was stopped when he turned left without a signal.
15	Respondent informed the officer at that time that his license was suspended. Respondent was
16	cited for driving on a suspended license and failing to use his signal.
17	25. On May 1, 2008, Respondent was sentenced to 15 days in jail.
18	FOURTH CAUSE FOR DISCIPLINE
19	(August 8, 2008 Criminal Conviction - Petty Theft on June 19, 2008)
20	26. Grounds exist to revoke Respondent's license pursuant to Code section
21	4300, section 4301, subdivisions (f) and (l) as well as 490 and 493 for commission of an act
22	involving moral turpitude and dishonesty and a criminal conviction that is substantially related to
23	the qualifications, functions, and duties of a Pharmacy Technician. On August 8, 2008, in a case
24	entitled People vs. Javier Maurici Varela Felix (Santa Barbara Superior Court Case No.
25	1260971), Respondent was convicted by a plea of guilt to a violation of Penal Code section
26	484(a) (petty theft), a misdemeanor.
27	27. The facts and circumstances surrounding this cause for discipline are as
28	follows: Respondent and three friends used wrenches and bolt cutters to steal three bicycles from
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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
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17	VIRGINIA HEROLD Executive Officer
18	Board of Pharmacy Department of Consumer Affairs
19	State of California
20	Complainant
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22	SD2009804895 80444033.DOC
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	8 Accusation