

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

In the Matter of the Accusation Against:

Case No. 3546

JOSE A. RAMIREZ
6311 Inman Street
San Diego, CA 92111

Original Pharmacy Technician Registration No.
TCH 65747

Respondent.

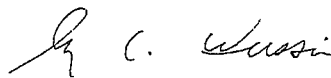
DECISION AND ORDER

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 February 17, 2011.

It is so ORDERED on January 18, 2011.

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 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **JOSE A. RAMIREZ**
13 **6311 Inman Street**
14 **San Diego, CA 92111**

15 **Original Pharmacy Technician Registration**
16 **No. TCH 65747**

17 Respondent.

Case No. 3546

OAH No. 2010041491

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Edmund
23 G. Brown Jr., Attorney General of the State of California, by Carl W. Sonne, Deputy Attorney
24 General.

25 2. Respondent Jose A. Ramirez (Respondent) is represented in this proceeding by
26 attorney Christian M. Ham, whose address is: 105 W F Street, Third Floor, San Diego, CA
27 92101.
28

1 3. On or about October 26, 2005, the Board of Pharmacy issued Original Pharmacy
2 Technician Registration No. TCH 65747 to Jose A. Ramirez (Respondent). The Original
3 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
4 brought in Accusation No. 3546 and will expire on March 31, 2011, unless renewed.

5 JURISDICTION

6 4. Accusation No. 3546 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on April 9, 2010.
9 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
10 No. 3546 is attached as exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 3546. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

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

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

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 3546.

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1 9. Respondent agrees that his Original Pharmacy Technician Registration is subject to
2 discipline and he agrees to be bound by the Board of Pharmacy (Board)'s probationary terms as
3 set forth in the Disciplinary Order below.

4 CONTINGENCY

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

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

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

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

2 IT IS HEREBY ORDERED that Original Pharmacy Technician Registration No. TCH
3 65747 issued to Respondent Jose A. Ramirez is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for three (3) years on the following terms and conditions.

5 **1. Certification Prior to Resuming Work**

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

12 During suspension, respondent shall not enter any pharmacy area or any portion of 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 Failure to comply with this suspension shall be considered a violation of probation.

21 **2. Obey All Laws**

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

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

- 25 an arrest or issuance of a criminal complaint for violation of any provision of the
26 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
27 substances laws
28 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any

1 criminal complaint, information or indictment

2 a conviction of any crime

3 discipline, citation, or other administrative action filed by any state or federal agency
4 which involves respondent's technician's license or which is related to the practice of
5 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
6 for any drug, device or controlled substance.

7 Failure to timely report any such occurrence shall be considered a violation of probation.

8 **3. Report to the Board**

9 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
10 designee. The report shall be made either in person or in writing, as directed. Among other
11 requirements, respondent shall state in each report under penalty of perjury whether there has
12 been compliance with all the terms and conditions of probation. Failure to submit timely reports
13 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
14 in submission of reports as directed may be added to the total period of probation. Moreover, if
15 the final probation report is not made as directed, probation shall be automatically extended until
16 such time as the final report is made and accepted by the board.

17 **4. Interview with the Board**

18 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
19 with the board or its designee, at such intervals and locations as are determined by the board or its
20 designee. Failure to appear for any scheduled interview without prior notification to board staff,
21 or failure to appear at two (2) or more scheduled interviews with the board or its designee during
22 the period of probation, shall be considered a violation of probation.

23 **5. Cooperate with Board Staff**

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

27 **6. Notice to Employers**

28 During the period of probation, respondent shall notify all present and prospective

1 employers of the decision in case number 3546 and the terms, conditions and restrictions imposed
2 on respondent by the decision, as follows:

3 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
4 respondent undertaking any new employment, respondent shall cause his direct supervisor,
5 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
6 tenure of employment) and owner to report to the board in writing acknowledging that the listed
7 individual(s) has/have read the decision in case number 3546 and the terms and conditions
8 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
9 supervisor(s) submit timely acknowledgement(s) to the board.

10 If respondent works for or is employed by or through a pharmacy employment service,
11 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
12 of the terms and conditions of the decision in case number 3546 in advance of the respondent
13 commencing work at each pharmacy. A record of this notification must be provided to the board
14 upon request.

15 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
16 (15) days of respondent undertaking any new employment by or through a pharmacy employment
17 service, respondent shall cause his direct supervisor with the pharmacy employment service to
18 report to the board in writing acknowledging that he has read the decision in case number 3546
19 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
20 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

24 "Employment" within the meaning of this provision shall include any full-time,
25 part-time, temporary or relief service or pharmacy management service as a pharmacy
26 technician or in any position for which a pharmacy technician license is a requirement
27 or criterion for employment, whether the respondent is considered an employee,
28 independent contractor or volunteer.

1 **7. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, respondent shall pay to the
3 board its costs of investigation and prosecution in the amount of \$2,342.50. Respondent shall
4 make said payments as follows: \$125 per month until paid in full. There shall be no deviation
5 from this schedule absent prior written approval by the board or its designee. Failure to pay costs
6 by the deadline(s) as directed shall be considered a violation of probation.

7 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
8 reimburse the board its costs of investigation and prosecution.

9 **8. Probation Monitoring Costs**

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

14 **9. Status of License**

15 Respondent shall, at all times while on probation, maintain an active, current pharmacy
16 technician license with the board, including any period during which suspension or probation is
17 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

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

23 Following the effective date of this decision, should respondent cease work due to
24 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
25 respondent may tender his pharmacy technician license to the board for surrender. The board or
26 its designee shall have the discretion whether to grant the request for surrender or take any other
27 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
28 license, respondent will no longer be subject to the terms and conditions of probation. This

1 surrender constitutes a record of discipline and shall become a part of the respondent's license
2 history with the board.

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

9 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
10 **Employment.**

11 Respondent shall notify the board in writing within ten (10) days of any change of
12 employment. Said notification shall include the reasons for leaving, the address of the new
13 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
14 shall further notify the board in writing within ten (10) days of a change in name, residence
15 address and mailing address, or phone number.

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

18 **12. Tolling of Probation**

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

25 Should respondent, regardless of residency, for any reason (including vacation) cease
26 working as a pharmacy technician for a minimum of ten (10) hours per calendar month in
27 California, respondent must notify the board in writing within ten (10) days of cessation of work
28 and must further notify the board in writing within ten (10) days of the resumption of the work.

1 Any failure to provide such notification(s) shall be considered a violation of probation.

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

5 "Cessation of work" means calendar month during which respondent is not
6 working for at least ten (10) hours as a pharmacy technician, as defined in Business
7 and Professions Code section 4115. "Resumption of work" means any calendar
8 month during which respondent is working as a pharmacy technician for at least ten
9 (10) hours as a pharmacy technician as defined by Business and Professions Code
10 section 4115.

11
12 **13. Violation of Probation**

13 If a respondent has not complied with any term or condition of probation, the board shall
14 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
15 all terms and conditions have been satisfied or the board has taken other action as deemed
16 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
17 to impose the penalty that was stayed.

18
19 If respondent violates probation in any respect, the board, after giving respondent notice
20 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
21 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
22 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
23 a petition to revoke probation or an accusation is filed against respondent during probation, the
24 board shall have continuing jurisdiction, and the period of probation shall be automatically
25 extended until the petition to revoke probation or accusation is heard and decided.
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1 **14. Completion of Probation**

2 Upon written notice by the board indicating successful completion of probation,
3 respondent's pharmacy technician license will be fully restored.

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

5 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
6 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
7 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
8 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
9 days following the effective date of this decision and shall immediately thereafter provide written
10 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
11 documentation thereof shall be considered a violation of probation.
12

13 **16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

14 In the event that respondent receives one (1) positive test for alcohol or for any drug not
15 lawfully prescribed by a licensed practitioner in accordance with the procedures described in
16 paragraph 17 below, respondent shall begin regular attendance at a recognized and established
17 substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics
18 Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend
19 at least one group meeting per week unless otherwise directed by the board or its designee.
20 Respondent shall continue regular attendance and submit signed and dated documentation
21 confirming attendance with each quarterly report for the duration of probation. Failure to attend
22 or submit documentation thereof shall be considered a violation of probation.
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25 **17. Random Drug Screening**

26 Respondent, at his own expense, shall participate in random testing, including but not
27 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
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1 screening program as directed by the board or its designee. Respondent may be required to
2 participate in testing for the entire probation period and the frequency of testing will be
3 determined by the board or its designee. At all times respondent shall fully cooperate with the
4 board or its designee, and shall, when directed, submit to such tests and samples for the detection
5 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
6 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
7 of probation. Upon request of the board or its designee, respondent shall provide documentation
8 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
9 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
10 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
11 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
12 shall be considered a violation of probation and shall result in the automatic suspension of work
13 by respondent. Respondent may not resume work as a pharmacy technician until notified by the
14 board in writing.
15

16
17 During suspension, respondent shall not enter any pharmacy area or any portion of or any
18 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
19 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
20 devices or controlled substances are maintained. Respondent shall not do any act involving drug
21 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
22 manage, administer, or assist any licensee of the board. Respondent shall not have access to or
23 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
24 substances. Respondent shall not resume work until notified by the board.
25

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

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

4 **18. Work Site Monitor**

5 Within ten (10) days of the effective date of this decision, respondent shall identify a work
6 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
7 during working hours. Respondent shall be responsible for ensuring that the work site monitor
8 reports in writing to the board quarterly. Should the designated work site monitor determine at
9 any time during the probationary period that respondent has not maintained sobriety, he shall
10 notify the board immediately, either orally or in writing as directed. Should respondent change
11 employment, a new work site monitor must be designated, for prior approval by the board, within
12 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
13 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
14 considered a violation of probation.
15

16
17 **19. Notification of Departure**

18 Prior to leaving the probationary geographic area designated by the board or its designee for
19 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
20 writing of the dates of departure and return. Failure to comply with this provision shall be
21 considered a violation of probation.
22

23 **20. Abstain from Drugs and Alcohol Use**

24 Respondent shall completely abstain from the possession or use of alcohol, controlled
25 substances, dangerous drugs and their associated paraphernalia except when the drugs are
26 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
27 request of the board or its designee, respondent shall provide documentation from the licensed
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1 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
2 treatment of the respondent. Failure to timely provide such documentation shall be considered a
3 violation of probation.. Respondent shall ensure that he is not in the same physical location as
4 individuals who are using illicit substances even if respondent is not personally ingesting the
5 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
6 not supported by the documentation timely provided, and/or any physical proximity to persons
7 using illicit substances, shall be considered a violation of probation.
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9 **21. Community Services Program**

10 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
11 board or its designee, for prior approval, a community service program in which respondent shall
12 provide free health-care related services on a regular basis to a community or charitable facility or
13 agency for at least ten (10) hours per month for the first five (5) months of probation. Within
14 thirty (30) days of board approval thereof, respondent shall submit documentation to the board
15 demonstrating commencement of the community service program. A record of this notification
16 must be provided to the board upon request. Respondent shall report on progress with the
17 community service program in the quarterly reports. Failure to timely submit, commence, or
18 comply with the program shall be considered a violation of probation.
19

20 ACCEPTANCE

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Christian M. Ham. I understand the stipulation and the effect it
23 will have on my Original Pharmacy Technician Registration. I enter into this Stipulated
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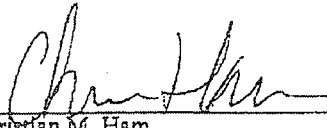
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Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 10/5/10 
JOSE A. RAMIREZ
Respondent

I have read and fully discussed with Respondent Jose A. Ramirez the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

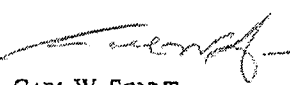
DATED: 10/5/10 
Christian M. Ham
Attorney for Respondent

ENDORSEMENT

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

Dated: Oct 5, 2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


CARL W. SONNE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3546

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 Case No. 3546

12 In the Matter of the Accusation Against:

13 JOSE A. RAMIREZ
6311 Inman Street
14 San Diego, CA 92111

ACCUSATION

15 Original Pharmacy Technician Registration
16 No. TCH 65747

17 Respondent.

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 October 26, 2005, the Board of Pharmacy issued Original Pharmacy
23 Technician Registration Number TCH 65747 to Jose A. Ramirez (Respondent). The Original
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on March 31, 2011, unless renewed.
26
27
28

1 **JURISDICTION**

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

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

11 **STATUTORY PROVISIONS**

12 6. Section 4301 of the Code states:

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

16

17 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
18 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.

19

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of
22 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction
26 shall be conclusive evidence only of the fact that the conviction occurred. The
27 board may inquire into the circumstances surrounding the commission of the
28 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

1 judgment of conviction has been affirmed on appeal or when an order granting
2 probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under Section 1203.4 of the Penal Code allowing the person to
4 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
5 the verdict of guilty, or dismissing the accusation, information, or indictment.

6
7 (p) Actions or conduct that would have warranted denial of a license.

8 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
9 revoke a license on the ground that the licensee has been convicted of a crime substantially
10 related to the qualifications, functions, or duties of the business or profession for which the
11 license was issued.

12 8. Section 493 of the Code states:

13 Notwithstanding any other provision of law, in a proceeding conducted by a
14 board within the department pursuant to law to deny an application for a license or
15 to suspend or revoke a license or otherwise take disciplinary action against a
16 person who holds a license, upon the ground that the applicant or the licensee has
17 been convicted of a crime substantially related to the qualifications, functions, and
18 duties of the licensee in question, the record of conviction of the crime shall be
19 conclusive evidence of the fact that the conviction occurred, but only of that fact,
20 and the board may inquire into the circumstances surrounding the commission of
21 the crime in order to fix the degree of discipline or to determine if the conviction is
22 substantially related to the qualifications, functions, and duties of the licensee in
23 question.

24 As used in this section, "license" includes "certificate," "permit,"
25 "authority," and "registration."

26 9. Section 482 of the Code states:

27 Each board under the provisions of this code shall develop criteria to
28 evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

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REGULATORY PROVISIONS

10. 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.

11. California Code of Regulations, title 16, section 1769, states:

.....
(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.

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(February 28, 2006 Conviction for Theft and Assault on September 10, 2005)

13. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (1) of the Code in that he was convicted of crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about January 18, 2006, in a criminal proceeding entitled *People of the*
2 *State of California v. Jose Ramirez*, in San Diego County Superior Court, case number
3 SCS196535, Respondent was charged in a three count felony complaint with two counts of
4 robbery, one with the use of a deadly weapon, and one count of assault with a deadly weapon. .

5 b. On or about February 28, 2006, Respondent entered a plea of guilty to violation
6 of Penal Code section 487(c), grand theft from person, which had been reduced from robbery, and
7 Penal Code section 245(A)(1) assault with a deadly weapon or force likely to cause great bodily
8 injury with an enhancement of using a deadly or dangerous weapon under Penal Code section
9 12022(B)(1).

10 c. As a result of the conviction, on or about March 28, 2006, Respondent was
11 sentenced to three years of formal probation, 180 days in the County Jail with 1 day credit for
12 time served, and required to pay a total fine of \$920.00 plus probation costs.

13 d. The facts that led to the conviction were that on or about September 10, 2005,
14 Respondent and his co-defendant, approached a male victim who was walking from the Palomar
15 Street trolley station area in Chula Vista. Respondent yelled to the victim to stop walking. After a
16 verbal exchange, Respondent told the victim not to talk back to him and then removed a knife
17 from his pocket and held it at the victim's waist level. The victim feared for his safety and
18 removed his wallet from his pocket. At this point, Respondent stated "I didn't tell you to get your
19 wallet" and then held the knife approximately twelve inches from the victim's face and demanded
20 his wallet. The co-defendant stood behind the victim and removed \$17.00 from the victim's
21 wallet. After removing the money from his wallet, Respondent asked, "Is this all you've got?"
22 and threw the victim's wallet to the ground. Respondent stated, "Next time, don't talk back" and
23 then walked back toward the trolley station.

24 e. Shortly thereafter, Respondent and his three co-defendant's approached and
25 formed a semi-circle around a second victim at the trolley station. Respondent and his co-
26 defendants had their fists clenched while encircling the victim. Respondent and one co-defendant
27 asked the victim where he was from and what he claimed. The victim asked "What's the
28 problem? I didn't do anything to you." Respondent and a co-defendant told the victim that it did

1 not matter and said, "Stop being a little bitch." Respondent took the victim's jacket and threw it
2 in the trashcan. A co-defendant removed the victim's wallet and took \$3 from it. Respondent
3 opened the victim's backpack and looked through it.

4 f. After witnessing the incident, a concerned citizen told Respondent and his co-
5 defendants to leave the victim alone. Respondent then removed the knife from his pocket and
6 threatened, "Mind your own business." At this point in time, Chula Vista Police officers
7 responded to the scene, located a kitchen knife with a three inch blade on top of a trolley ticket
8 machine, and then arrested Respondent and his co-defendants.

9 g. Following admonishment, Respondent declined to discuss his involvement in
10 the offense. Respondent was searched and found in possession of \$10. Respondent later
11 admitted that he had consumed several alcoholic beverages earlier that day. Respondent also
12 admitted to taking the first victim's wallet and displaying the knife.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Moral Turpitude and Dishonesty)**

15 14. Respondent is subject to disciplinary action for unprofessional conduct under section
16 4301(f) of the Code in that Respondent's assault of his victim at knife-point and theft constitute
17 moral turpitude and dishonesty, as is detailed in paragraph 13, above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Conduct That Would Have Warranted Denial of a License)**

20 15. Respondent is subject to disciplinary action under section 4301(p) of the Code in that
21 on or about September 10, 2005, Respondent violated Penal Code sections 487(C), grand theft
22 from a person, and 245(A)(1), assault with a deadly weapon or force likely to cause great bodily
23 injury. Such egregious conduct would have warranted the denial of a pharmacy technician
24 registration under section 480, subdivisions (a)(1) and (a)(2) of the Code.

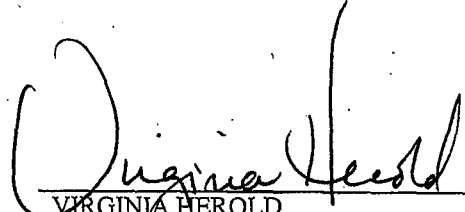
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Original Pharmacy Technician Registration Number TCH 65747, issued to Jose A. Ramirez;
2. Ordering Jose A. Ramirez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/30/10



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

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