

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

In the Matter of the Statement of Issues Against:

Case No. 4053

**CHRISTIAN LEE SPEARS**

200 w. San Bernardino Ave, #102 ½  
Rialto, CA 92376

Application for Pharmacy Technician  
Registration

Respondent.

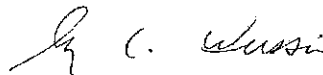
**DECISION AND ORDER**

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 April 8, 2013.

It is so ORDERED on March 7, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
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7

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

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

Case No. 4053

12 **CHRISTIAN LEE SPEARS**  
13 **200 W. San Bernardino Ave, #102 1/2**  
**Rialto, CA 92376**  
14 **Application for Pharmacy Technician**  
**Registration**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 Respondent.

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

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
24 She brought this action solely in her official capacity and is represented in this matter by Kamala  
25 D. Harris, Attorney General of the State of California, by Morgan Malek, Deputy Attorney  
26 General.  
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1           2. Respondent Christian Lee Spears (Respondent) is representing himself in this  
2 proceeding and has chosen not to exercise his right to be represented by counsel.

3           3. On or about August 13, 2010, Respondent filed an application dated August 5, 2010,  
4 with the Board of Pharmacy to obtain an Application for Pharmacy Technician Registration.

5   JURISDICTION

6           4. Statement of Issues No. 4053 was filed before the Board of Pharmacy (Board),  
7 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of  
8 Issues and all other statutorily required documents were properly served on Respondent on July 2,  
9 2012. A copy of Statement of Issues No. 4053 is attached as exhibit A and incorporated herein  
10 by reference.

11   ADVISEMENT AND WAIVERS

12           5. Respondent has carefully read, and understands the charges and allegations in  
13 Statement of Issues No. 4053. Respondent has also carefully read, and understands the effects of  
14 this Stipulated Settlement and Disciplinary Order.

15           6. Respondent is fully aware of his legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Statement of Issues; the right to be represented by  
17 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
18 the right to present evidence and to testify on his own behalf; the right to the issuance of  
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
20 reconsideration and court review of an adverse decision; and all other rights accorded by the  
21 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 Statement of  
26 Issues No. 4053.

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1 9. Respondent agrees that his Application for Pharmacy Technician Registration is  
 2 subject to denial and he agrees to be bound by the Board's probationary terms as set forth in the  
 3 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. By signing the stipulation, Respondent understands and agrees  
 9 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the  
 10 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
 11 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for  
 12 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
 13 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:

26 DISCIPLINARY ORDER

27 IT IS HEREBY ORDERED that Respondent Christian Lee Spears that Application for  
 28 Pharmacy Technician Registration will be issued and immediately revoked. The order of

1 revocation will be stayed and the Respondent will be placed on three (3) years probation on the  
2 following terms and conditions.

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

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

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

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

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

22 **2. Obey All Laws**

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

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

- 26  an arrest or issuance of a criminal complaint for violation of any provision of the  
27 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
28 substances laws

- 1            a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
2           criminal complaint, information or indictment
- 3            a conviction of any crime
- 4            discipline, citation, or other administrative action filed by any state or federal agency  
5           which involves respondent's Pharmacy Technician Registration or which is related to  
6           the practice of pharmacy or the manufacturing, obtaining, handling, distributing,  
7           billing, or charging for any drug, device or controlled substance.

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

9           **3. Report to the Board**

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

18           **4. Interview with the Board**

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

24           **5. Cooperate with Board Staff**

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

28           **6. Notice to Employers**

1 During the period of probation, respondent shall notify all present and prospective  
2 employers of the decision in case number 4053 and the terms, conditions and restrictions imposed  
3 on respondent by the decision, as follows:

4 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
5 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
6 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
7 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
8 individual(s) has/have read the decision in case number 4053 and the terms and conditions  
9 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or  
10 supervisor(s) submit timely acknowledgement(s) to the board.

11 If respondent works for or is employed by or through a pharmacy employment service,  
12 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy  
13 of the terms and conditions of the decision in case number 4053 in advance of the respondent  
14 commencing work at each pharmacy. A record of this notification must be provided to the board  
15 upon request.

16 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
17 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
18 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
19 report to the board in writing acknowledging that he has read the decision in case number 4053  
20 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
21 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

1 independent contractor or volunteer.

2 **7. Probation Monitoring Costs**

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

7 **8. Status of License**

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

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

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

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

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



1 board.

2 **10. Notification of a Change in Name, Residence Address, Mailing Address or**  
3 **Employment**

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

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

11 **11. Tolling of Probation**

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

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

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

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

1 month during which respondent is working as a pharmacy technician for at least forty  
2 (40) hours as a pharmacy technician as defined by Business and Professions Code  
3 section 4115.

4 **12. Violation of Probation**

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

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

17 **13. Completion of Probation**

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

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

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

28 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a

1 manager, administrator, member, officer, director, trustee, associate, or partner of any additional  
2 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or  
3 has any legal or beneficial interest in, or serve as a manager, administrator, member, officer,  
4 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently  
5 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold  
6 that interest, but only to the extent of that position or interest as of the effective of this decision.  
7 Violation of this restriction shall be considered a violation of probation.

8 **15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

9 Within thirty (30) days of positive drug screen, Respondent shall begin regular attendance  
10 at a recognized and established substance abuse recovery support group in California, (e.g.,  
11 Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its  
12 designee. Respondent must attend at least one group meeting per week unless otherwise directed  
13 by the board or its designee. Respondent shall continue regular attendance and submit signed and  
14 dated documentation confirming attendance with each quarterly report for the duration of  
15 probation. Failure to attend or submit documentation thereof shall be considered a violation of  
16 probation.

17 **16. Random Drug Screening**

18 Respondent, at his own expense, shall participate in random testing, including but not  
19 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
20 screening program as directed by the board or its designee. Respondent may be required to  
21 participate in testing for the entire probation period and the frequency of testing will be  
22 determined by the board or its designee. At all times respondent shall fully cooperate with the  
23 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
24 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
25 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
26 of probation. Upon request of the board or its designee, respondent shall provide documentation  
27 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
28 a necessary part of the treatment of the respondent. Failure to timely provide such documentation

1 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
2 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
3 shall be considered a violation of probation and shall result in the automatic suspension of work  
4 by respondent. Respondent may not resume work as a pharmacy technician until notified by the  
5 board in writing.

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

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

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

19 **17. Notification of Departure**

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

24 **18. Abstain from Drugs and Alcohol Use**

25 Respondent shall completely abstain from the possession or use of alcohol, controlled  
26 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
27 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
28 request of the board or its designee, respondent shall provide documentation from the licensed

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.

8 **19. Prescription Coordination and Monitoring of Prescription Use**

9 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
10 Board, for its approval, the name and qualifications of a single physician, nurse practitioner,  
11 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the  
12 Respondent's history [with the use of alcohol, controlled substances, and/or dangerous drugs],  
13 and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs,  
14 controlled substances or mood-altering drugs. The approved practitioner shall be provided with a  
15 copy of the Board's [accusation or petition to revoke probation] and decision. A record of this  
16 notification must be provided to the Board upon request. Respondent shall sign a release  
17 authorizing the practitioner to communicate with the Board about Respondent's treatment(s). The  
18 coordinating physician, nurse practitioner, physician's assistant, or psychiatrist shall report to the  
19 Board on a quarterly basis for the duration of probation regarding Respondent's compliance with  
20 this condition. If any substances considered addictive have been prescribed, the report shall  
21 identify a program for the time limited use of any such substances. The Board may require that  
22 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist to be  
23 specialist in addictive medicine, or consult a specialist in addictive medicine. Should Respondent  
24 , for any reason, cease supervision by the approved practitioner, Respondent shall notify the  
25 Board immediately and, within thirty (30) days of ceasing treatment, submit the name of a  
26 replacement physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's  
27 choice to the Board or its designee for its prior approval. Failure to timely submit the selected  
28 practitioner or replacement practitioner to the Board for approval, or to ensure the required

1 reporting thereby on the quarterly reports, shall be considered a violation of probation.

2 If at any time an approved practitioner determines that Respondent is unable to practice  
3 safely or independently as a pharmacist, the practitioner shall notify the Board immediately by  
4 telephone and follow up by written letter within three (3) working days. Upon notification from  
5 the Board or its designee of this determination, Respondent shall be automatically suspended and  
6 shall not resume practice until notified by the Board that practice may be resumed.

7 During Suspension, Respondent shall not enter any pharmacy area or any portion of the  
8 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
9 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices  
10 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
11 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
12 or patient consultation; nor shall Respondent manage, administer, or be a consultant to any  
13 licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of  
14 dangerous drugs and controlled substances. Respondent shall not resume practice until notified  
15 by the Board.

16 During suspension, Respondent shall not engage in any activity that requires the  
17 professional judgment of a pharmacist. Respondent shall direct or control any aspect of the  
18 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
19 designated representative for any entity licensed by the Board.

20 Subject to the above restrictions, Respondent may continue to own or hold any interest in  
21 any licensed premises in which he or she holds an interest at the time this decision becomes  
22 effective unless otherwise specified in this order.

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

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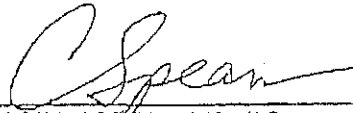
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Application for Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

2/1/2013



CHRISTIAN LEE SPEARS  
Respondent

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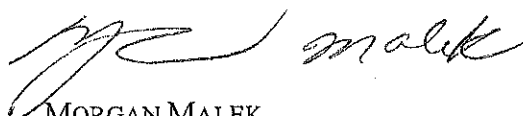
ENDORSEMENT

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:

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
MARC D. GREENBAUM  
Supervising Deputy Attorney General



MORGAN MALEK  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Statement of Issues No. 4053**

1 KAMALA D. HARRIS  
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2 MARC D. GREENBAUM  
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14 **Application for Pharmacy Technician**  
**Registration**

**FIRST AMENDED STATEMENT OF**  
**ISSUES**

15 Respondent.

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20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 24 2. On or about August 13, 2010, the Board of Pharmacy, Department of Consumer  
25 Affairs received an Application for Pharmacy Technician Registration from Christian Lee Spears  
26 (Respondent). On or about August 5, 2010, Christian Lee Spears certified under penalty of  
27 perjury to the truthfulness of all statements, answers, and representations in the application. The  
28 Board denied the application on March 1, 2011.

1 JURISDICTION

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

5 STATUTORY PROVISIONS

6 4. Section 475 of the Code states:

7 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
8 govern the denial of licenses on the grounds of:

9 "(1) Knowingly making a false statement of material fact, or knowingly  
10 omitting to state a material fact, in an application for a license.

11 "(2) Conviction of a crime.

12 "(3) Commission of any act involving dishonesty, fraud or deceit with the  
13 intent to substantially benefit himself or another, or substantially injure another.

14 "(4) Commission of any act which, if done by a licentiate of the business or  
15 profession in question, would be grounds for suspension or revocation of  
16 license.

17 "(b) Notwithstanding any other provisions of this code, the provisions of this division shall  
18 govern the suspension and revocation of licenses on grounds specified in paragraphs (1)  
19 and (2) of subdivision (a) .

20 "(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good  
21 moral character or any similar ground relating to an applicant's character, reputation,  
22 personality, or habits."

23 5. Section 480 states, in pertinent part:

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

26 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
27 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any  
28 action that a board is permitted to take following the establishment of a conviction  
may be taken 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 the provisions of  
Section 1203.4 of the Penal Code.

29 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
30 would be grounds for suspension or revocation of license.

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

33 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
34 revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the  
2 license was issued.

3 7. Section 492 of the Code provides, in pertinent part, that notwithstanding any other  
4 provision of law, successful completion of any diversion program under the Penal Code, or  
5 successful completion of an alcohol and drug problem assessment program under Article 5  
6 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not  
7 prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500)  
8 of this code, or any initiative act referred to in that division, from taking disciplinary action  
9 against a licensee or from denying a license for professional misconduct, notwithstanding that  
10 evidence of that misconduct may be recorded in a record pertaining to an arrest...

11 8. Section 493 provides, in pertinent part, that notwithstanding any other provision of  
12 law, in a proceeding conducted by a board within the department pursuant to law to deny an  
13 application for a license or to suspend or revoke a license or otherwise take disciplinary action  
14 against a person who holds a license, upon the ground that the applicant or the licensee has been  
15 convicted of a crime substantially related to the qualifications, functions, and duties of the  
16 licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact  
17 that the conviction occurred, but only of that fact, and the board may inquire into the  
18 circumstances surrounding the commission of the crime in order to fix the degree of discipline or  
19 to determine if the conviction is substantially related to the qualifications, functions, and duties of  
20 the licensee in question.

21 As used in this section, "license" includes "certificate," "permit," "authority," and  
22 "registration."

23 9. Section 4301 of the Code states:

24 "The board shall take action against any holder of a license who is guilty of unprofessional  
25 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:

26 ...

27 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
28 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

1 public, or to the extent that the use impairs the ability of the person to conduct with safety  
2 to the public the practice authorized by the license.

3 ...  
4 "(j) The violation of any of the statutes of this state, or any other state, or of the United  
5 States regulating controlled substances and dangerous drugs.

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

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

21 "(p) Actions or conduct that would have warranted denial of a license...

### 22 REGULATORY PROVISIONS

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

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

### 29 CONTROLLED SUBSTANCE

30 11. "Methamphetamine," is a Schedule II controlled substance as designated by Health  
31 and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section  
32 4022.

### 33 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 34 (Criminal Convictions)

35 12. Respondent's application is subject to denial under section 480, subdivision (a)(1),  
36 and section 4301(l) of the Code in that Respondent was convicted of crimes as follows:

1 a. On or about June 29, 2005, after pleading *nolo contendere*, Respondent was  
2 convicted of one misdemeanor count of violating Penal Code section 243 subdivision (e)(1)  
3 [battery to spouse] in the criminal proceeding entitled *The People of the State of California v.*  
4 *Christian Lee Spears* (Super. Ct. Shasta County, 2005, No. 05-0004738). The Court sentenced  
5 Respondent to serve 3 days in Shasta County Jail and placed him on 36 months probation, with  
6 terms and conditions. The circumstances surrounding the conviction are that on or about June 29,  
7 2005, Respondent and his wife had an altercation. He pushed her to the ground and she scraped  
8 her knee. Respondent was subsequently arrested for violating Penal Code section 273.5,  
9 subdivision (a) [corporal injury].

10 b. On or about June 9, 1999, after pleading guilty, Respondent was convicted of one  
11 misdemeanor count of violating Vehicle Code section 23103.5 [reckless driving] in the criminal  
12 proceeding entitled *The People of the State of California v. Christian Lee Spears* (Super. Ct. San  
13 Bernardino County, 1999, No. TSB100939). The Court ordered pronouncement of Judgment  
14 withheld and conditional and revocable release granted for a period of 36 months, with terms and  
15 conditions. The circumstances surrounding the conviction are that on or about December 19,  
16 1998, Respondent drove a vehicle upon a highway in a wanton and reckless manner with willful  
17 disregard for the safety of himself and others.

## 18 SECOND CAUSE FOR DENIAL OF APPLICATION

### 19 (Acts Warranting Denial of Licensure)

20 13. Respondent's application is subject to denial under section 4300, subdivision (c),  
21 section 4301, subdivisions (p) and (h), and section 480, subdivisions (a)(3)A) and (a)(3)(B) of the  
22 Code , in that Respondent committed acts which if done by a licentiate of the business and  
23 profession in question, would be grounds for suspension or revocation of his license as follows:

24 a. Respondent was convicted of crimes substantially related to the qualifications,  
25 functions, or duties of a pharmacy technician which to a substantial degree evidence his present  
26 or potential unfitness to perform the functions authorized by his license in a manner consistent  
27 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,  
28 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraphs  
2 (a) and (b), inclusive, as though set forth fully.

3 b. On or about, November 19, 2007 during an investigation by the San Bernardino  
4 Sheriff's Department of an attempted suicide, Respondent admitted to leaving a note and taking a  
5 bottle of rat poison from his family's home. When asked if he had anything illegal in the shorts,  
6 Respondent admitted "I have a little bit of drugs." During a search of Respondent's shorts, the  
7 officer found a short cut straw and a plastic baggie with a crystal-like substance resembling  
8 Methamphetamine. Respondent admitted to the officer "[t]hat is a little bit of meth, sir." He was  
9 subsequently transported to the Behavioral Health Unit at Arrowhead Medical Center for medical  
10 attention and found to be in violation of Health and Safety Code section 11377, subdivision (a)  
11 [possession of a controlled substance].

12 c. Respondent was found to be in possession of a controlled substance, to wit:  
13 Methamphetamine, in violation of section 4301, subdivisions (j) and (o). Complainant refers to,  
14 and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph  
15 (b), as though set forth fully.

16 d. On or about September 27, 2010, in response to the Board of Pharmacy's request to  
17 provide additional information in support of respondent's Application for Registration as a  
18 Pharmacy Technician, Respondent admitted "[I] was heavily into drugs" in 2005. Further,  
19 Respondent admitted that when he was investigated on or about November 19, 2007, he was "still  
20 on drugs".

### 21 THIRD CAUSE FOR DENIAL OF APPLICATION

#### 22 **(Unprofessional Conduct-Use of a Dangerous Drug)**

23 14. Respondent's application is subject to denial under section 480(a)(3) and 4301 (h) of  
24 the Code in that on November 19, 2007 and July 25, 2005, Respondent was under the influence of  
25 methamphetamine, a dangerous drug, to the extent or in a manner as to be dangerous or injurious  
26 to himself or to the public. Complainant refers to, and by this reference incorporates, the  
27 allegations set forth above in paragraph 13, subparagraphs (b) through (d), inclusive, as though  
28 set forth fully. Methamphetamine is Scheduled II Stimulant (Health & Safety Code

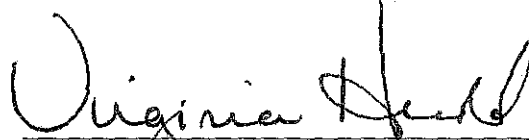
1 § 11055(a)(2), so classified because of its high potential for abuse. Respondent was subsequently  
2 transported to the Behavioral Health Unit at Arrowhead Medical Center for medical attention and  
3 found to be in violation of Health and Safety Code section 11377, subdivision (a) [possession of a  
4 controlled substance].

5 PRAYER

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

- 8 1. Denying the application of Christian Lee Spears for an Application for Pharmacy  
9 Technician Registration;  
10 2. Taking such other and further action as deemed necessary and proper.

11  
12  
13 DATED: 12/20/12



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

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