

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

In the Matter of the Accusation Against:

Case No. 4161

MATTHEW MANUEL LOPEZ

3195 Ruskin Drive
San Jose, CA 95132

Pharmacy Technician License No. TCH 67876

Respondent.

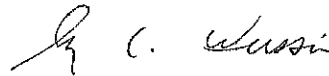
DECISION AND ORDER

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 November 19, 2012.

It is so ORDERED on October 19, 2012.

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 FRANK H. PACOE
Supervising Deputy Attorney General
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4161

12 **MATTHEW MANUEL LOPEZ**
13 **3195 Ruskin Drive**
14 **San Jose, CA 95132**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Pharmacy Technician License No. TCH 67876

Respondent.

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

19 PARTIES

20 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
21 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,
22 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

23 2. Matthew Manuel Lopez (Respondent) is representing himself in this proceeding and
24 has chosen not to exercise his right to be represented by counsel.

25 3. On or about February 28, 2006, the Board of Pharmacy issued Pharmacy Technician
26 License No. TCH 67876 to Matthew Manuel Lopez (Respondent). The Pharmacy Technician
27 License was in full force and effect at all times relevant to the charges brought in Accusation No.
28 4161 and will expire on December 31, 2013, unless renewed.

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JURISDICTION

4. Accusation No. 4161 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 June 26, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 4161 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands, the charges and allegations in Accusation No. 4161. Respondent also has carefully read, and understands the effects of, this Stipulated Surrender of License and Order.

6. 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.

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

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 4161, if proven at a hearing, constitute cause for imposing discipline upon his License. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

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

CONTINGENCY

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

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

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

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

ORDER

21
22
23 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 67876, issued to
24 Respondent Matthew Manuel Lopez, is surrendered and accepted by the Board of Pharmacy.

25 1. The surrender of Respondent’s Pharmacy Technician License and the acceptance of
26 the surrendered License by the Board shall constitute the imposition of discipline against
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
28 Respondent’s license history with the Board of Pharmacy.

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

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

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

7 5. If he ever applies for licensure or petitions for reinstatement in the State of California,
8 the Board shall treat it as a new application for licensure. Respondent must comply with all laws,
9 regulations and procedures for licensure in effect at the time the application or petition is filed,
10 and all of the charges and allegations in Accusation No. 4161 shall be deemed to be true, correct
11 and admitted by Respondent when the Board determines whether to grant or deny.

12 6. Respondent shall pay the agency its costs of investigation and enforcement in the
13 amount of \$1,740.00 prior to issuance of a new or reinstated license.

14 7. If Respondent should ever apply or reapply for a new license or certification, or
15 petition for reinstatement of a license, by any other health care licensing agency in the State of
16 California, all of the charges and allegations contained in Accusation No. 4161 shall be deemed to
17 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
18 other proceeding seeking to deny or restrict licensure.

19
20 ACCEPTANCE

21 I have carefully read the Stipulated Surrender of License and Order. I understand the
22 stipulation and the effect it will have on my Pharmacy Technician License. I enter into this
23 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
24 be bound by the Decision and Order of the Board of Pharmacy.

25
26 DATED: 8-31-12

Matthew Lopez
27 MATTHEW MANUEL LOPEZ
Respondent

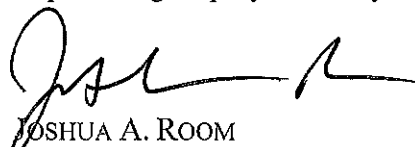
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ENDORSEMENT

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

Dated: 9/5/2012

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4161

EXHIBIT A

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
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10 In the Matter of the Accusation Against:

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11 **MATTHEW MANUEL LOPEZ**
12 **aka Mathew Manuel Lopez**
13 **aka Matthew Joseph Lopez**
14 **3195 Ruskin Drive**
San Jose, CA 95132

A C C U S A T I O N

15 **Pharmacy Technician License No. TCH 67876**

16 Respondent.

17 Complainant alleges:

18 PARTIES

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

21 2. On or about February 28, 2006, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 67876 to Matthew Manuel Lopez aka Mathew Manuel Lopez aka Matthew
23 Joseph Lopez (Respondent). The License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on December 31, 2013, unless renewed.

25 JURISDICTION

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.]. Section 4300(a) of the Code provides that every
4 license issued by the Board may be suspended or revoked.

5 5. Section 118(b) of the Code provides, in pertinent part, 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. Section 4402(a) of the Code provides that any pharmacist license that is not
9 renewed within three years following its expiration may not be renewed, restored, or reinstated
10 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
11 the Code provides that any other license issued by the Board may be canceled by the Board if not
12 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
13 reissued but will instead require a new application to seek reissuance.

14 STATUTORY AND REGULATORY PROVISIONS

15 6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
16 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
17 not be limited to, any of the following:

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

23 (j) The violation of any of the statutes of this state, of any other state, or of the United
24 States regulating controlled substances and dangerous drugs.

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

1 8. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
2 controlled substance, except that furnished upon a valid prescription/drug order.

3 9. Health and Safety Code section 11170 provides that no person shall prescribe,
4 administer, or furnish a controlled substance for himself or herself.

5 10. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess
6 an opium pipe or other paraphernalia used to inject or smoke controlled substances.

7 11. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
8 any controlled substance in Schedule II, subdivision (d), without a prescription.

9 12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
10 person to use or be under the influence of any controlled substance in Schedule II (Health and
11 Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V,
12 except when administered by or under the direction of an authorized licensee.

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

16 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

17 14. Section 4021 of the Code states:

18 “Controlled substance” means any substance listed in Chapter 2 (commencing with Section
19 11053) of Division 10 of the Health and Safety Code.”

20 15. Section 4022 of the Code states, in pertinent part:

21 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self use,
22 except veterinary drugs that are labeled as such, and includes the following:

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

25 ...

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

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1 16. **Methamphetamine** is a Schedule II controlled substance as designated by Health and
2 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
3 Code section 4022. It is a stimulant drug.

4 FACTUAL BACKGROUND

5 17. On or about June 23, 2010, Respondent was sitting in a parked vehicle when he was
6 contacted by officer(s) from the Santa Clara (CA) Police Department. The officer(s) noted that
7 Respondent was exhibiting signs of being under the influence of drugs (fluttering eyelids, lack of
8 pupil response to ambient light), and a search of the vehicle revealed a plastic baggie containing a
9 white crystal substance that subsequently tested positive as **methamphetamine** (0.5 grams).

10 18. On or about September 13, 2010, Respondent was issued a Notice to Appear by Santa
11 Clara (CA) Police for misdemeanor violation of Santa Clara Municipal Code section 9.05.010(a)
12 (Urinating in Public). On or about October 5, 2010, Respondent entered a plea guilty and was
13 convicted of violating Santa Clara Municipal Code section 9.05.010(a) (Urinating in Public), a
14 misdemeanor. Imposition of sentence was suspended in favor of a probation period of one year.

15 19. On or about September 17, 2010, Santa Clara (CA) Police officer(s) responded to a
16 report of a suspicious male in the bathroom of a Safeway store. Respondent exited the bathroom
17 carrying an open container of beer. When the officer(s) spoke to Respondent outside the store, he
18 exhibited symptoms consistent with a stimulant drug, including quick and raspy speech, sweating,
19 hot and clammy skin, involuntary, fidgeting movements, grimacing mouth movements, fluttering
20 eyelids, and pupils that were non-reactive to ambient light). Respondent admitted to the officer(s)
21 that he had smoked **methamphetamine** about three hours prior, and that he went in the bathroom
22 at the Safeway to masturbate. The officer(s) searched a gym bag that Respondent was carrying
23 and found a clear glass smoking pipe with white, grey and black residue, that was recognized to
24 be used to smoke **methamphetamine**. Respondent admitted that the pipe belonged to him.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substance)

3 20. Respondent is subject to discipline under section 4301(h) of the Code, in that
4 Respondent, as described in paragraph(s) 17 and/or 19 above, self-administered
5 **methamphetamine**, a controlled substance, on one or more occasions.

6 SECOND CAUSE FOR DISCIPLINE

7 (Possession of Controlled Substance)

8 21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
9 4060 of the Code, and/or Health and Safety Code section 11377, in that Respondent, as described
10 in paragraph(s) 17 and/or 19 above, possessed, conspired to possess, and/or assisted in or abetted
11 possession of **methamphetamine**, a controlled substance, without a prescription.

12 THIRD CAUSE FOR DISCIPLINE

13 (Possession of Drug Paraphernalia)

14 22. Respondent is subject to discipline under section 4301(j) and/or (o), and/or Health
15 and Safety Code section 11364, in that Respondent, as described in paragraph 19 above,
16 possessed, conspired to possess, and/or assisted in or abetted possession of drug paraphernalia.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Self-Administration/Use of Controlled Substance)

19 23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
20 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in
21 paragraph(s) 17 and/or 19 above, self-administered/used, conspired to self-administer/use, and/or
22 assisted in/abetted self-administration/use of a controlled substance, without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct)

25 24. Respondent is subject to discipline under section 4301 of the Code in that
26 Respondent, as described in paragraph(s) 17-23 above, engaged in unprofessional conduct.

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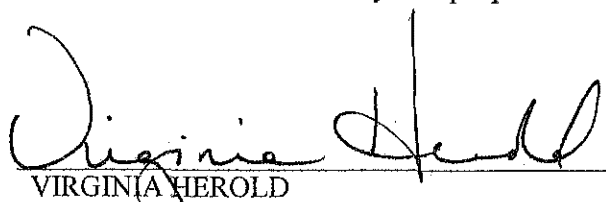
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 67876, issued to Matthew Manuel Lopez aka Mathew Manuel Lopez aka Matthew Joseph Lopez (Respondent);
2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 6/15/12



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

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