

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

In the Matter of the Accusation Against:

Case No. 4275

**CESAR GARCIABUENO**

P.O.Box 131351  
San Diego, CA 92170

Pharmacy Technician Registration No.  
TCH 44346

Respondent.

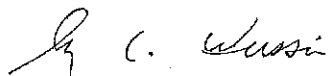
**DECISION AND ORDER**

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 30, 2012.

It is so ORDERED on October 31, 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 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4275

12 **CESAR ANTONIO GARCIABUENO**  
13 **P. O. Box 131351**  
14 **San Diego, CA 92170**  
**Pharmacy Technician Registration No. TCH**  
15 **44346**

**STIPULATED SURRENDER OF**  
**LICENSE AND ORDER**

16 Respondent.

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

21 PARTIES

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
23 She brought this action solely in her official capacity and is represented in this matter by Kamala  
24 D. Harris, Attorney General of the State of California, by Marichelle S. Tahimic, Deputy  
25 Attorney General.

26 2. Cesar Antonio GarciaBueno (Respondent) is representing himself in this proceeding  
27 and has chosen not to exercise his right to be represented by counsel.

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1           1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance  
2 of the surrendered license by the Board shall constitute the imposition of discipline against  
3 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
4 Respondent's license history with the Board of Pharmacy. Respondent is required to report this  
5 surrender as disciplinary action.

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

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

10          4. Respondent may not apply for any license, permit or registration from the Board for  
11 three (3) years from the effective date of this decision.

12          5. If Respondent ever applies for licensure or petitions for reinstatement in the State of  
13 California, the Board shall treat it as a new application for licensure. Respondent must comply  
14 with all the laws, regulations and procedures for licensure in effect at the time the application or  
15 petition is filed, including taking and passing the Pharmacy Technician Certification Examination  
16 (PTCB), and, all of the charges and allegations contained in Accusation No. 4275 shall be  
17 deemed to be true, correct and admitted by Respondent when the Board determines whether to  
18 grant or deny the application or petition.

19          6. Respondent shall pay the agency its costs of investigation and enforcement in the  
20 amount of \$1,377.50 prior to application for a new license.

21          7. If Respondent should ever apply or reapply for a new license or certification, or  
22 petition for reinstatement of a license, by any other health care licensing agency in the State of  
23 California, all of the charges and allegations contained in Accusation, No. 4275 shall be deemed  
24 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any  
25 other proceeding seeking to deny or restrict licensure.

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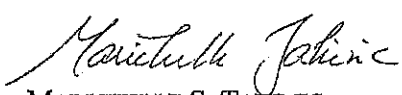
ACCEPTANCE

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

DATED: 8/23/12   
CESAR ANTONIO GARCIBUENO  
Respondent

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: Sept. 4, 2012 Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
  
MARICHELLE S. TAHIMIC  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 4275**

1 KAMALAD. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
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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 **CESAR GARCIABUENO**  
13 **P. O. Box 131351**  
14 **San Diego, CA 92170**  
15 **Pharmacy Technician Registration**  
**No. TCH 44346**  
16 **Respondent.**

Case No. 4275

**ACCUSATION**

17  
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 December 27, 2002, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 44346 to Cesar GarciaBueno (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on September 30, 2012, unless renewed.

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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 4300(a) of the Code states that "[e]very license issued may be suspended or  
6 revoked."

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

11 STATUTORY AND REGULATORY PROVISIONS

12 6. Section 482 of the Code states:

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

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

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

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

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

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8. Section 492 of the Code states:

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

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

9. Section 493 of the Code states:

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

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

10. Section 4301 of the Code states:

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

....

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

....

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

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

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

9 11. Section 4022 of the Code states

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

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

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

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

20 12. Title 16, California Code of Regulations, section 1769, states:

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

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

26 (2) Total criminal record.

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

28 (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.

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

2 For the purpose of denial, suspension, or revocation of a personal or facility  
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
4 Professions Code, a crime or act shall be considered substantially related to the  
5 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.

6 **COST RECOVERY**

7 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
8 administrative law judge to direct a licensee found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

11 **DRUG**

12 15. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety  
13 Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions  
14 Code section 4022.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct – Under the Influence of a Controlled Substance –  
17 Methamphetamine – on July 31, 2011)**

18 16. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
19 (o) of the Code in that Respondent was under the influence of the controlled substance and  
20 dangerous drug, methamphetamine, without a prescription. The circumstances are as follows:

21 17. On July 31, 2011, at approximately 0745 hours, Susanville Police Department  
22 officers responded to a report of a juvenile vandalizing garbage cans at a little league park in the  
23 area of River Street and South McDow.

24 18. Upon arrival, officers made contact with Respondent. Respondent was acting  
25 unusual. Officers asked if he needed the officers' assistance and Respondent asked officers for a  
26 New York seltzer beverage. Officers attempted to handcuff Respondent while they completed  
27 their investigation and Respondent resisted the officers. Officers arrested Respondent for  
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1 resisting arrest as he was agitated and combatant, and transported him to the county detention  
2 facility for booking.

3 19. Once at the detention facility, officers noticed Respondent was constantly pacing in  
4 his holding cell, pulling his hair and looking rapidly in all directions. Officers conducted a drug  
5 influence evaluation on Respondent by using a pupilometer, pen light and a digital heart rate  
6 monitor. During the evaluation, Respondent was constantly moving around, seemed nervous or  
7 paranoid and had rapid speech. Respondent told officers that he had been using  
8 methamphetamine continuously for the last three days, with the most recent use the morning of  
9 July 31, 2011. Respondent told officers that he traded a ring for \$50 worth of methamphetamine  
10 and snorted it early that morning. Respondent provided officers with a urine sample which tested  
11 positive for methamphetamine. Officers added a charge of being under the influence of a  
12 controlled substance. A subsequent toxicology report showed that Respondent's specimen tested  
13 positive for methamphetamine.

14 20. As a result of the arrest, on or about March 24, 2011, in a criminal proceeding entitled  
15 *People of the State of California vs. Cesar A. Garcia-Bueno*, in the Superior Court of the State of  
16 California, County of Lassen, in Case No. CR029025, Respondent pled not guilty to violating  
17 Penal Code section 148(a)(1) (resisting/obstructing peace officers) and Health and Safety Code  
18 section 11550(a) (under the influence of a controlled substance -- methamphetamine).

19 21. On September 27, 2011, Case No. CR029025 was ordered dismissed in the interest of  
20 justice.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Use of Controlled Substances or Dangerous Drugs to an Extent**  
23 **or in Manner Dangerous or Injurious to Self or Others)**

24 22. Respondent is subject to disciplinary action under section 4301(h) of the Code in that  
25 on or about July 31, 2011, Respondent used and was under the influence of controlled substances,  
26 to wit: methamphetamine, to an extent or in a manner dangerous or injurious to himself or others,  
27 as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.  
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THIRD CAUSE FOR DISCIPLINE

**(Unprofessional Conduct - Committed Act Which Would Have Warranted Denial of License)**

23. Respondent is subject to disciplinary action under section 4301(p) of the Code in that he engaged in actions or conduct that would have warranted denial of a license, as fully set forth at paragraph 16 through 21, above, which are incorporated here by reference.

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 Registration Number TCH 44346, issued to Cesar Antonio GarciaBueno;
2. Ordering Cesar Antonio GarciaBueno 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:

5/31/12

*Virginia Nerold*

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

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