

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

In the Matter of the Statement of Issues Against:

Case No. 4357

ERIC MONTES
1440 Carlisle Avenue
Modesto, CA 95356

OAH No. 2014040414

Pharmacy Technician Registration Applicant

Respondent.

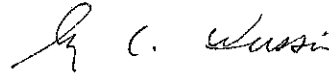
DECISION AND ORDER

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 November 7, 2014.

It is so ORDERED on October 31, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

12 **ERIC MONTES**

13 **Pharmacy Technician Registration**
14 **Applicant**

15 Respondent.

Case No. 4357

OAH No. 201404040414

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

19 PARTIES

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

24 2. On or about May 23, 2011, Respondent filed an application dated May 19, 2011, with
25 the Board of Pharmacy to obtain a Pharmacy Technician Registration. Respondent is
26 representing himself in this proceeding and has chosen not to exercise his right to be represented
27 by legal counsel.

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1 JURISDICTION

2 3. Statement of Issues No. 4357 was filed before the Board of Pharmacy (Board) ,
3 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of
4 Issues and all other statutorily required documents were properly served on Respondent on March
5 13, 2014.

6 4. A copy of Statement of Issues No. 4357 is attached as exhibit A and incorporated
7 herein by reference.

8 ADVISEMENT AND WAIVERS

9 5. Respondent has carefully read, and understands the charges and allegations in
10 Statement of Issues No. 4357. Respondent has also carefully read, and understands the effects of
11 this Stipulated Settlement and Disciplinary Order.

12 6. Respondent is fully aware of his legal rights in this matter, including the right to a
13 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
14 counsel at his own expense; the right to confront and cross-examine the witnesses against his; the
15 right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to
16 compel the attendance of witnesses and the production of documents; the right to reconsideration
17 and court review of an adverse decision; and all other rights accorded by the California
18 Administrative Procedure Act and other applicable laws.

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

21 CULPABILITY

22 8. Respondent admits the truth of each and every charge and allegation in Statement of
23 Issues No. 4357.

24 9. Respondent agrees that his Pharmacy Technician Registration is subject to denial and
25 his to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Respondent's Pharmacy Technician Registration will be
3 issued and immediately revoked. The revocation will be stayed and the Respondent placed on
4 three (3) years probation 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 his 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 Subject to the above restrictions, respondent may continue to own or hold an interest in any
21 licensed premises by the board in which his 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.

24 2. **Obey All Laws**

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

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

- 28 an arrest or issuance of a criminal complaint for violation of any provision of the

1 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
2 substances laws

3 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
4 criminal complaint, information or indictment

5 a conviction of any crime

6 discipline, citation, or other administrative action filed by any state or federal agency
7 which involves respondent's Pharmacy Technician Registration or which is related to
8 the practice of pharmacy or the manufacturing, obtaining, handling, distributing,
9 billing, or charging for any drug, device or controlled substance.

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

11 **3. Report to the Board**

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

20 **4. Interview with the Board**

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

26 **5. Cooperate with Board Staff**

27 Respondent shall cooperate with the board's inspection program and with the board's
28 monitoring and investigation of respondent's compliance with the terms and conditions of his

1 probation. Failure to cooperate shall be considered a violation of probation.

2 **6. Notice to Employers**

3 During the period of probation, respondent shall notify all present and prospective
4 employers of the decision in case number 4357 and the terms, conditions and restrictions imposed
5 on respondent by the decision, as follows:

6 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
7 respondent undertaking any new employment, respondent shall cause his direct supervisor,
8 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
9 tenure of employment) and owner to report to the board in writing acknowledging that the listed
10 individual(s) has/have read the decision in case number 4357 and the terms and conditions
11 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
12 supervisor(s) submit timely acknowledgement(s) to the board.

13 If respondent works for or is employed by or through a pharmacy employment service,
14 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
15 of the terms and conditions of the decision in case number 4357 in advance of the respondent
16 commencing work at each pharmacy. A record of this notification must be provided to the board
17 upon request.

18 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
19 (15) days of respondent undertaking any new employment by or through a pharmacy employment
20 service, respondent shall cause his direct supervisor with the pharmacy employment service to
21 report to the board in writing acknowledging that his has read the decision in case number 4357
22 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
23 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

27 "Employment" within the meaning of this provision shall include any full-time,
28 part-time, temporary or relief service or pharmacy management service as a pharmacy

1 technician or in any position for which a pharmacy technician license is a requirement
2 or criterion for employment, whether the respondent is considered an employee,
3 independent contractor or volunteer.

4 **7. Probation Monitoring Costs**

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

9 **8. Status of License**

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

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

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

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

26 Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician
27 license to the board within ten (10) days of notification by the board that the surrender is
28 accepted. Respondent may not reapply for any license, permit, or registration from the board for

1 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
2 applicable to the license sought as of the date the application for that license is submitted to the
3 board.

4 **10. Notification of a Change in Name, Residence Address, Mailing Address or**
5 **Employment**

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

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

13 **11. Tolling of Probation**

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

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

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

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1 "Cessation of work" means calendar month during which respondent is not
2 working for at least _____ hours as a pharmacy technician, as defined in Business
3 and Professions Code section 4115. "Resumption of work" means any calendar
4 month during which respondent is working as a pharmacy technician for at least
5 _____ hours as a pharmacy technician as defined by Business and Professions
6 Code section 4115.

7 **12. Violation of Probation**

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

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

20 **13. Completion of Probation**

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

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

24 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
25 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
26 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
27 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
28 days following the effective date of this decision and shall immediately thereafter provide written

1 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
2 documentation thereof shall be considered a violation of probation.

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

4 In the event that Respondent tests positive for alcohol, controlled substances, or dangerous
5 drugs during probation, consistent with condition 16, below, respondent shall immediately begin
6 regular attendance at a recognized and established substance abuse recovery support group in
7 California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved
8 by the board or its designee. Respondent must attend at least one group meeting per week unless
9 otherwise directed by the board or its designee. Respondent shall continue regular attendance and
10 submit signed and dated documentation confirming attendance with each quarterly report for the
11 duration of probation. Failure to attend or submit documentation thereof shall be considered a
12 violation of probation.

13 **16. Random Drug Screening**

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

1 board in writing.

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

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

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

15 **17. Work Site Monitor**

16 Within ten (10) days of the effective date of this decision, respondent shall identify a work
17 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
18 during working hours. Respondent shall be responsible for ensuring that the work site monitor
19 reports in writing to the board quarterly. Should the designated work site monitor determine at
20 any time during the probationary period that respondent has not maintained sobriety, his shall
21 notify the board immediately, either orally or in writing as directed. Should respondent change
22 employment, a new work site monitor must be designated, for prior approval by the board, within
23 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
24 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
25 considered a violation of probation.

26 **18. Notification of Departure**

27 Prior to leaving the probationary geographic area designated by the board or its designee for
28 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in

1 writing of the dates of departure and return. Failure to comply with this provision shall be
2 considered a violation of probation.

3 **19. Abstain from Drugs and Alcohol Use**

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

15 **20. Prescription Coordination and Monitoring of Prescription Use**

16 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
17 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
18 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
19 history with the use of alcohol, and who will coordinate and monitor any prescriptions for
20 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
21 practitioner shall be provided with a copy of the board's Statement of Issues, Stipulated
22 Settlement, and decision. A record of this notification must be provided to the board upon
23 request. Respondent shall sign a release authorizing the practitioner to communicate with the
24 board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician
25 assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation
26 regarding respondent's compliance with this condition. If any substances considered addictive
27 have been prescribed, the report shall identify a program for the time limited use of any such
28 substances. The board may require that the single coordinating physician, nurse practitioner,

1 physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in
2 addictive medicine. Should respondent, for any reason, cease supervision by the approved
3 practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing
4 treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or
5 psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to
6 timely submit the selected practitioner or replacement practitioner to the board for approval, or to
7 ensure the required reporting thereby on the quarterly reports, shall be considered a violation of
8 probation.

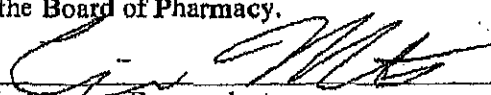
9 If at any time an approved practitioner determines that respondent is unable to practice
10 safely or independently as a pharmacy technician, the practitioner shall notify the board
11 immediately by telephone and follow up by written letter within three (3) working days. Upon
12 notification from the board or its designee of this determination, respondent shall be
13 automatically suspended and shall not resume practice until notified by the board that practice
14 may be resumed.

15 During suspension, respondent shall not enter any pharmacy area or any portion of the
16 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
17 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
18 or controlled substances are maintained. During suspension, Respondent shall not practice as a
19 pharmacy technician nor do any act that requires registration as a pharmacy technician with the
20 Board. Respondent shall not resume practice until notified by the board.

21
22 ACCEPTANCE

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

27 DATED: 07/29/2014


Eric Montes, Respondent

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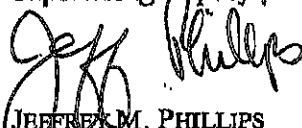
ENDORSEMENT

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

Dated: 7/29/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General


JEFFREY M. PHILLIPS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 4357

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
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7 Attorneys for Complainant

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12 Against:

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13 **ERIC MONTES**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 23, 2011, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for Pharmacy Technician Registration from Eric Montes (Respondent).

23 On or about May 19, 2011, Eric Montes certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 April 2, 2012.

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JURISDICTION

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

4. Section 4300, subdivision (c) of the Code states in pertinent part:

"The board may refuse a license to any applicant guilty of unprofessional conduct..."

5. Section 4301 of the Code states in pertinent part:

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.

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

1 6. Section 480 of the Code states in pertinent part:

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

4 (1) Been convicted of a crime. A conviction within the meaning of this section means
5 a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
6 board is permitted to take following the establishment of a conviction may be taken when the time
7 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
8 order granting probation is made suspending the imposition of sentence, irrespective of a
9 subsequent order under the provisions of Section 1203.4 of the Penal Code.

10 ...
11 (3) (A) Done any act that if done by a licentiate of the business or profession in
12 question, would be grounds for suspension or revocation of license.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Criminal Convictions)**

15 7. Respondent's application is subject to denial for unprofessional under section 4300,
16 subdivision (c), as defined in section 4301, subdivisions (k) and (l), and 480, subdivision (a),
17 paragraph (1), in that Respondent has been convicted of four (4) misdemeanors, two (2) involving
18 the use, consumption, or self-administration of alcohol. The circumstances are as follows:

19 a. On or about November 15, 2006, in a criminal proceeding entitled *People v. Eric*
20 *Montes* in Merced County Superior Court, Case Number MM212481, Respondent was convicted
21 by plea of nolo contendere of violating Vehicle Code section 20002, subdivision (a), (vehicular
22 hit and run), a misdemeanor.

23 b. On or about January 23, 2007, in a criminal proceeding entitled *People v. Eric Montes*
24 in Merced County Superior Court, Case Number MM213752, Respondent was convicted by plea
25 of nolo contendere of violating Vehicle Code section 23152, subdivision (b), (driving while under
26 the influence of alcohol with blood alcohol level greater than 0.08% by volume), a misdemeanor.

27 c. On or about January 15, 2008, in a criminal proceeding entitled *People v. Eric*
28 *Montes* in Sacramento County Superior Court, Case Number 08T00033, Respondent was
29 convicted by plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b),
30 (driving while under the influence of alcohol with blood alcohol level greater than 0.08% by

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1 volume), and Vehicle Code section 14601.2, subdivision (a), (driving while license suspended
2 due to previous DUI), misdemeanors.

3 d. On or about October 27, 2010, in a criminal proceeding entitled *People v. Eric*
4 *Montes* in Merced County Superior Court, Case Number AM219459, Respondent was convicted
5 by plea of nolo contendere of violating Vehicle Code section 14601.2, subdivision (a), (driving
6 with license suspended due to previous DUI), a misdemeanor.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Use of Alcohol to an Extent or in a Manner Dangerous to Self or Others)**

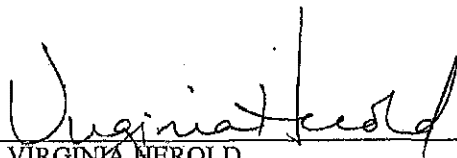
9 8. Respondent's application is subject to denial under section 480, subdivision (a),
10 paragraph (3), for committing acts which if done by a licensee would subject him to discipline as
11 defined by section 4301, subdivision (h), unprofessional conduct, in that Respondent used alcohol
12 to an extent or in a manner dangerous to himself or others by driving a vehicle upon a public
13 roadway while under the influence of alcohol on two (2) occasions as described in paragraph 8,
14 subdivisions (b) and (c), above.

15 **PRAYER**

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

- 18 1. Denying the application of Eric Montes for a Pharmacy Technician Registration;
19 2. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: 2/14/14


23 VIRGINIA MEROLD
Executive Officer
24 Board of Pharmacy
Department of Consumer Affairs
25 State of California
Complainant
26

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