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

In the Matter of the Petition to Revoke
Probation Against:

Case No. 4539

DARQUIS K. FISHER
40 Navy Road
San Francisco, CA 94124
Pharmacy Technician Registration No. TCH
108401

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about March 19, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 4539 against Darquis K. Fisher (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

1 2. On or about March 28, 2012, the Board of Pharmacy (Board) issued Pharmacy
2 Technician Registration No. TCH 108401 to Respondent. The Pharmacy Technician Registration
3 expired on July 31, 2013, and has not been renewed.

4 3. On or about April 29, 2013, Respondent was served by Certified and First Class Mail
5 copies of the Petition to Revoke Probation No. 4539, Statement to Respondent, Notice of
6 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
7 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
8 Professions Code section 4100, is required to be reported and maintained with the Board.
9 Respondent's address of record was and is:

10 40 Navy Road
11 San Francisco, CA 94124.

12 4. Service of the Petition to Revoke Probation was effective as a matter of law under the
13 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
14 Code section 124.

15 5. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
19 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
20 may nevertheless grant a hearing.

21 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
22 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
23 Petition to Revoke Probation No. 4539.

24 7. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

 8. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.
3 4539, finds that the charges and allegations in Petition to Revoke Probation No. 4539 are,
4 separately and severally, found to be true and correct by clear and convincing evidence.

5 9. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$1,657.50 as of August 7, 2013.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Darquis K. Fisher has subjected
10 his Pharmacy Technician Registration No. TCH 108401 to discipline.

11 2. The agency has jurisdiction to adjudicate this case by default.

12 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
13 Registration based upon the following violations alleged in the Petition to Revoke Probation
14 which are supported by the evidence contained in the Default Decision Evidence Packet in this
15 case:

16 a. Violation of Condition 3 of probation in that Respondent failed to file quarterly
17 reports to the Board;

18 b. Violation of Condition 15 of probation in that Respondent failed to attend and/or
19 submit documentation of having attended substance abuse recovery support group meetings;

20 c. Violation of Condition 16 of probation in that Respondent failed to participate in the
21 Board's random drug screening program, failed to call in for instructions on multiple occasions,
22 and failed to submit to scheduled drug tests on multiple occasions;

23 d. Violation of Condition 19 of probation in that Respondent tested positive for alcohol
24 and provided no explanation to the Board.

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ORDER

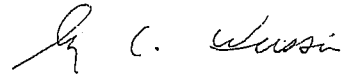
IT IS ORDERED that Pharmacy Technician Registration No. TCH 108401, heretofore issued to Respondent Darquis K. Fisher, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on November 22, 2013.

It is so ORDERED ON October 23, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

DOJ Matter ID:SF2013403845

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 BRETT A. KINGSBURY
Deputy Attorney General
4 State Bar No. 243744
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1192
6 Facsimile: (415) 703-5480
Attorneys for Complainant.
7

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

10 In the Matter of the Petition to Revoke
11 Probation Against

Case No. 4539

12 **DARQUIS K. FISHER**
40 Navy Road
13 San Francisco, CA 94124
14 **Pharmacy Technician License No. TCH**
108401

PETITION TO REVOKE PROBATION

15 Respondent.
16

17 Complainant alleges:
18

19 PARTIES

20 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about March 28, 2012, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 108401 to Darquis K. Fisher (Respondent). The Pharmacy Technician
25 License will expire on July 31, 2013, unless renewed.

26 3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Darquis
27 K. Fisher," Case No. 4048, the Board of Pharmacy issued a decision, effective March 28, 2012, in
28 which Respondent's Pharmacy Technician License was revoked. However, the revocation was

1 stayed and Respondent's Pharmacy Technician License was placed on probation for a period of
2 three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A
3 and is incorporated by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),
6 Department of Consumer Affairs, under the authority of the following laws. All section
7 references are to the Business and Professions Code unless otherwise indicated.

8 5. Section 4300 of the Code states:

9 "(a) Every license issued may be suspended or revoked.

10 "(b) The board shall discipline the holder of any license issued by the board, whose default
11 has been entered or whose case has been heard by the board and found guilty, by any of the
12 following methods:

13 "(1) Suspending judgment.

14 "(2) Placing him or her upon probation.

15 "(3) Suspending his or her right to practice for a period not exceeding one year.

16 "(4) Revoking his or her license.

17 "(5) Taking any other action in relation to disciplining him or her as the board in its
18 discretion may deem proper.

19 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
20 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
21 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
22 may issue the license subject to any terms or conditions not contrary to public policy, including,
23 but not limited to, the following:

24 "(1) Medical or psychiatric evaluation.

25 "(2) Continuing medical or psychiatric treatment.

26 "(3) Restriction of type or circumstances of practice.

27 "(4) Continuing participation in a board-approved rehabilitation program.

28 "(5) Abstention from the use of alcohol or drugs.

1 B. Respondent did not file a quarterly report with the Board on or before July 10, 2012.

2 SECOND CAUSE TO REVOKE PROBATION

3 (Failure to Attend and/or Report regarding Abuse Recovery Relapse Prevention and Support
4 Groups)

5 8. At all times after the effective date of Respondent's probation, Condition 15 stated:

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

12 9. Respondent's probation is subject to revocation because he failed to comply with
13 Probation Condition 15, referenced above. The facts and circumstances regarding this violation
14 are as follows:

15 A. Respondent failed to attend and/or submit documentation of having attended a
16 substance abuse recovery support group as of the due date for the first quarterly report.

17 THIRD CAUSE TO REVOKE PROBATION

18 (Failure to Submit to Drug Screening)

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

1 shall result in the automatic suspension of work by respondent. Respondent may
2 not resume work as a pharmacy technician until notified by the board in writing. . .

3 11. Respondent's probation is subject to revocation because he failed to comply with
4 Probation Condition 16, referenced above. The facts and circumstances regarding this violation
5 are as follows:

6 A. Respondent failed to participate in the Board's random drug screening program.
7 Respondent failed to call in for instructions regarding possible testing on the following dates:

- 8 1. March 29 through April 3, 2012;
- 9 2. April 12, 2012;
- 10 3. April 14, 2012;
- 11 4. April 28, 2012;
- 12 5. May 1, 2012;
- 13 6. May 7, 2012;
- 14 7. May 13, 2012;
- 15 8. May 16, 2012; and
- 16 9. May 21, 2012, through at least August 5, 2012.

17 B. Furthermore, Respondent failed to submit to scheduled drug tests on the following
18 dates:

- 19 1. April 12, 2012;
- 20 2. April 19, 2012;
- 21 3. April 24, 2012;
- 22 4. May 4, 2012;
- 23 5. May 8-9, 2012;
- 24 6. May 17, 2012;
- 25 7. June 8, 2012;
- 26 8. June 18-19, 2012;
- 27 9. June 8, 2012;
- 28

- 1 10. June 18-19, 2012;
- 2 11. June 28, 2012;
- 3 12. July 6, 2012;
- 4 13. July 12, 2012;
- 5 14. July 20, 2012; and
- 6 15. July 24, 2012.

7 FOURTH CAUSE TO REVOKE PROBATION

8 (Failure to Abstain from Drugs and Alcohol)

9 12. At all times after the effective date of Respondent's probation, Condition 19 stated:
10 Respondent shall completely abstain from the possession or use of alcohol,
11 controlled substances, dangerous drugs and their associated paraphernalia except
12 when the drugs are lawfully prescribed by a licensed practitioner as part of a
13 documented medical treatment. Upon request of the board or its designee,
14 respondent shall provide documentation from the licensed practitioner that the
15 prescription for the drug was legitimately issued and is a necessary part of the
16 treatment of the respondent. Failure to timely provide such documentation shall be
17 considered a violation of probation. Respondent shall ensure that he is not in the
18 same physical location as individuals who are using illicit substances even if
19 respondent is not personally ingesting the drugs. Any possession or use of alcohol,
20 controlled substances, or their associated paraphernalia not supported by the
21 documentation timely provided, and/or any physical proximity to persons using
22 illicit substances, shall be considered a violation of probation.

23 13. Respondent's probation is subject to revocation because he failed to comply with
24 Probation Condition 19, referenced above. The facts and circumstances regarding this violation
25 are as follows:

26 A. Respondent tested positive for ETG/ETS (alcohol) on April 18, 2012. Respondent
27 was instructed to provide an explanation to the Board for the positive result, but did not respond.

28 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:

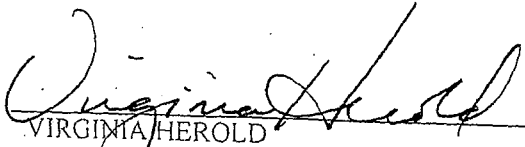
- 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4048
and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician
License No. TCH 108401 issued to Darquis K. Fisher;

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2. Revoking or suspending Pharmacy Technician License No. TCH 108401, issued to Darquis K. Fisher;

3. Taking such other and further action as is deemed necessary and proper.

DATED: 3/19/13



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

SF2013403845
.rtf

Exhibit A

Decision and Order

Board of Pharmacy Case No. 4048

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

In the Matter of the Statement of Issues Against:

Case No. 4048

Darguis K. Fisher
40 Navy Road
San Francisco, CA 94124

Respondent.

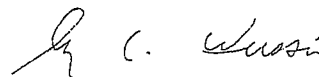
DECISION AND ORDER

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 March 28, 2012.

It is so ORDERED on February 27, 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
3 BRETT A. KINGSBURY
Deputy Attorney General
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6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

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

Case No. 4048

12 DARQUIS K. FISHER

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

13 Respondent.
14

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

16 PARTIES

17 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
18 She brought this action solely in her official capacity and is represented in this matter by Kamala
19 D. Harris, Attorney General of the State of California, by Brett A. Kingsbury, Deputy Attorney
20 General.

21 2. Respondent Darquis K. Fisher (Respondent) is representing himself in this
22 proceeding and has chosen not to exercise his right to be represented by counsel.

23 3. On or about October 1, 2010, Respondent filed an application dated September 10,
24 2010, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

25 JURISDICTION

26 4. Statement of Issues No. 4048 was filed before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of
28

1 Issues and all other statutorily required documents were properly served on Respondent on
2 September 19, 2011. A copy of Statement of Issues No. 4048 is attached as exhibit A and
3 incorporated herein by reference.

4 ADVISEMENT AND WAIVERS

5 5. Respondent has carefully read and understands the charges and allegations in
6 Statement of Issues No. 4048. Respondent has also carefully read and understands the effects of
7 this Stipulated Settlement and Disciplinary Order.

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

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

17 CULPABILITY

18 8. Respondent admits the truth of each and every charge and allegation in Statement of
19 Issues No. 4048.

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

23 CONTINGENCY

24 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
25 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
26 communicate directly with the Board regarding this stipulation and settlement, without notice to
27 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
28 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the

1 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
2 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
3 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
4 not be disqualified from further action by having considered this matter.

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

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

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

17 DISCIPLINARY ORDER

18 IT IS HEREBY ORDERED THAT upon satisfaction of all statutory and regulatory
19 requirements for issuance of a license, a license shall be issued to respondent and immediately
20 revoked; the order of revocation will be stayed and respondent will be placed on probation for
21 three (3) years upon the following terms and conditions:

22 1. Certification Prior to Resuming Work

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

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

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

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

13 2. Obey All Laws

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

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

- 17 an arrest or issuance of a criminal complaint for violation of any provision of the
18 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
19 substances laws
- 20 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
21 criminal complaint, information or indictment
- 22 a conviction of any crime
- 23 discipline, citation, or other administrative action filed by any state or federal agency
24 which involves respondent's pharmacy technician license or which is related to the
25 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
26 or charging for any drug, device or controlled substance.

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

28 3. Report to the Board

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

9 4. Interview with the Board

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

15 5. Cooperate with Board Staff

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

19 6. Notice to Employers

20 During the period of probation, respondent shall notify all present and prospective
21 employers of the decision in case number 4048 and the terms, conditions and restrictions imposed
22 on respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
24 respondent undertaking any new employment, respondent shall cause his direct supervisor,
25 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
26 tenure of employment) and owner to report to the board in writing acknowledging that the listed
27 individual(s) has/have read the decision in case number 4048 and the terms and conditions
28 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or

1 supervisor(s) submit timely acknowledgement(s) to the board.

2 If respondent works for or is employed by or through a pharmacy employment service,
3 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
4 of the terms and conditions of the decision in case number 4048 in advance of the respondent
5 commencing work at each pharmacy. A record of this notification must be provided to the board
6 upon request.

7 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
8 (15) days of respondent undertaking any new employment by or through a pharmacy employment
9 service, respondent shall cause his direct supervisor with the pharmacy employment service to
10 report to the board in writing acknowledging that he has read the decision in case number 4048
11 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
12 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

21 7. Probation Monitoring Costs

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

26 8. Status of License

27 Respondent shall, at all times while on probation, maintain an active, current pharmacy
28 technician license with the board, including any period during which suspension or probation is

1 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

6 9. License Surrender While on Probation/Suspension

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

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

21 10. Notification of a Change in Name, Residence Address, Mailing Address or
22 Employment

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

28 Failure to timely notify the board of any change in employer(s), name(s), address(es), or

1 phone number(s) shall be considered a violation of probation.

2 11. Tolling of Probation

3 Except during periods of suspension, respondent shall, at all times while on probation, be
4 employed as a pharmacy technician in California for a minimum of 20 hours per calendar month.
5 Any month during which this minimum is not met shall toll the period of probation, i.e., the
6 period of probation shall be extended by one month for each month during which this minimum is
7 not met. During any such period of tolling of probation, respondent must nonetheless comply
8 with all terms and conditions of probation.

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

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

17 "Cessation of work" means calendar month during which respondent is not
18 working for at least 20 hours as a pharmacy technician, as defined in Business and
19 Professions Code section 4115. "Resumption of work" means any calendar month
20 during which respondent is working as a pharmacy technician for at least 20 hours as
21 a pharmacy technician as defined by Business and Professions Code section 4115.

22 12. Violation of Probation

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

28 If respondent violates probation in any respect, the board, after giving respondent notice

1 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
2 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
3 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
4 a petition to revoke probation or an accusation is filed against respondent during probation, the
5 board shall have continuing jurisdiction, and the period of probation shall be automatically
6 extended until the petition to revoke probation or accusation is heard and decided.

7 13. Completion of Probation

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

10 14. No Ownership of Licensed Premises

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

18 15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

19 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
20 attendance at a recognized and established substance abuse recovery support group in California,
21 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board
22 or its designee. Respondent must attend at least one group meeting per week unless otherwise
23 directed by the board or its designee. Respondent shall continue regular attendance and submit
24 signed and dated documentation confirming attendance with each quarterly report for the duration
25 of probation. Failure to attend or submit documentation thereof shall be considered a violation of
26 probation.

27 16. Random Drug Screening

28 Respondent, at his own expense, shall participate in random testing, including but not

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

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

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

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

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17. Work Site Monitor

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

18. Notification of Departure

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

19. Abstain from Drugs and Alcohol Use

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

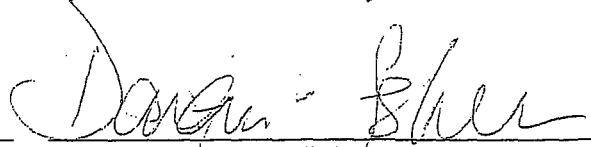
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my 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:

12/13/11



DARQUIS K. FISHER
Respondent

ENDORSEMENT

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

Dated:

1/30/12

Respectfully submitted,

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



BRETT A. KINGSBURY
Deputy Attorney General
Attorneys for Complainant

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Attorneys for Complainant

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. 4048

12 DARQUIS K. FISHER
40 Navy Rd.
13 San Francisco, CA 94124

STATEMENT OF ISSUES

14 Respondent.
15

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about October 1, 2010, the Board of Pharmacy (Board), Department of
21 Consumer Affairs received an application for a Pharmacy Technician Registration from Darquis
22 K. Fisher (Respondent). On or about September 10, 2010, Darquis K. Fisher certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on February 17, 2011.

25 JURISDICTION

- 26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 4. Section 4300 of the Code states:

2 ". . . .

3 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
4 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
5 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
6 may issue the license subject to any terms or conditions not contrary to public policy, including,
7 but not limited to, the following:

- 8 "(1) Medical or psychiatric evaluation.
- 9 "(2) Continuing medical or psychiatric treatment.
- 10 "(3) Restriction of type or circumstances of practice.
- 11 "(4) Continuing participation in a board-approved rehabilitation program.
- 12 "(5) Abstention from the use of alcohol or drugs.
- 13 "(6) Random fluid testing for alcohol or drugs.
- 14 "(7) Compliance with laws and regulations governing the practice of pharmacy.

15 ". . . .

16 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
18 shall have all the powers granted therein. The action shall be final, except that the propriety of
19 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
20 Civil Procedure."

21 JURISDICTION

22 5. Section 480 of the Business and Professions Code provides, in pertinent part, that a
23 board may deny a license if the applicant has been convicted of a crime substantially related to
24 the qualifications, functions or duties of the business or profession for which application is made,
25 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done
26 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made
27 a false statement of fact required to be revealed in the application.

28 6. Section 4301 of the Code states:

1 "The board shall take action against any holder of a license who is guilty of unprofessional
2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

3 Unprofessional conduct shall include, but is not limited to, any of the following:

4 ". . . .

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

10 ". . . .

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

14 "(l) The conviction of a crime substantially related to the qualifications, functions, and
15 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
16 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
17 substances or of a violation of the statutes of this state regulating controlled substances or
18 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
19 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
20 The board may inquire into the circumstances surrounding the commission of the crime, in order
21 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
22 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
23 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
24 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
25 of this provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
28 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3"

4 7. California Code of Regulations, title 16, section 1770, states:

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

11 FIRST CAUSE FOR DENIAL OF APPLICATION

12 (Criminal Convictions)

13 8. Respondent's application is subject to denial pursuant to Code sections 480, 4300(c),
14 and 4301(k) & (l), as refined by title 17, section 1770, California Code of Regulations, in that
15 Respondent received a criminal conviction. Specifically, on or around December 10, 2008, in the
16 Superior Court of California, County of Alameda, Respondent pled no contest to and was
17 convicted of violating California Vehicle Code 23153(b) (Driving with .08% Blood Alcohol
18 Causing Injury), a felony. The circumstances were that Respondent drove while intoxicated and
19 collided with another vehicle.

20 SECOND CAUSE FOR DENIAL OF APPLICATION

21 (Dangerous Use of Alcohol)

22 9. Respondent's application is subject to denial pursuant to Code sections 4300(c) and
23 4301(h) in that Respondent administered to himself alcoholic beverages to the extent or in a
24 manner dangerous or injurious to himself, to any other person, or to the public, or to the extent
25 that the use impaired his ability to conduct with safety to the public the practice authorized by the
26 license. The circumstances are described above in the First Cause for Denial of Application.

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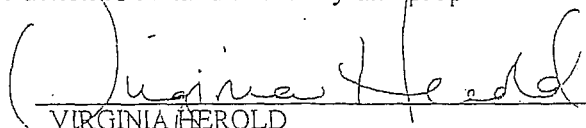
PRAYER

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. Denying the application of Darquis K. Fisher for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

8/16/11



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

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