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

12 In the Matter of the Petition to Revoke  
13 Probation Against:

Case No. 4540

14  
15 **ROBERT MICHAEL MAGDALENO**  
16 **3349 W. Euclid Avenue**  
**Stockton, CA 95204**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

17 **Original Pharmacy Technician Registration**  
18 **No. TCH 110546**

19  
20 Respondent.

21  
22 **FINDINGS OF FACT**

23 1. On or about June 5, 2013, Complainant California State Board of Pharmacy, in her  
24 official capacity as the Pharmacy Technician of the Department of Consumer Affairs, filed  
25 Petition to Revoke Probation No. 4540 against Robert Michael Magdaleno (Respondent) before  
26 the California Board of Pharmacy (Board). A copy of the Petition to Revoke Probation attached  
27 as Exhibit A.  
28

1       2.     On or about May 18, 2012, the Board issued Original Pharmacy Technician  
2 Registration No. TCH 110546 to Respondent. The Original Pharmacy Technician Registration  
3 will expire on December 31, 2013, unless renewed.

4       3.     On or about July 5, 2013, Respondent was served by Certified Mail and United States  
5 First Class mail with copies of the Petition to Revoke Probation No. 4540, Statement to  
6 Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government  
7 Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant  
8 to Business and Professions Code section 4100, is required to be reported and maintained with the  
9 Board. Respondent's address of record was and is: 3349 W. Euclid Avenue, Stockton, CA 95204.

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

13       5.     On or about July 8, 2013, the Board's counsel received a signed Green Card for  
14 Certified Mail containing the documents described in Paragraph 3 above. The United States First  
15 Class Mail to Respondent containing the aforesaid documents was not returned by the United  
16 States Postal Service.

17       6.     Government Code section 11506 states, in pertinent part:

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

23       7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
24 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of  
25 Petition to Revoke Probation No. 4540.

26       8.     California Government Code section 11520 states, in pertinent part:

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

1           9. Pursuant to its authority under Government Code section 11520, the Board finds  
2 Respondent is in default. The Board will take action without further hearing and, based on the  
3 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
4 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
5 therein on file at the Board's offices regarding the allegations contained in Petition to Revoke  
6 Probation No. 4540, finds that the charges and allegations in Petition to Revoke Probation No.  
7 4540, are separately and severally, are true and correct by clear and convincing evidence.

8                                   DETERMINATION OF ISSUES

9           1. Based on the foregoing findings of fact, Respondent Robert Michael Magdaleno has  
10 subjected his Original Pharmacy Technician Registration No. TCH 110546 to discipline.

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

12           3. The Board is authorized to revoke Respondent's Original 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. Respondent violated his probation in this matter arising from an adopted Stipulated  
17 Settlement and Disciplinary Order effective on dated May 18, 2012. Respondent violated  
18 Condition No. 15 of that Order requiring that he attend substance abuse recovery by testing  
19 positive for alcohol in random drug screening.

20           b. Respondent violated Condition No. 16 of the Order by failing to participate in random  
21 biological fluid testing on multiple occasions in 2012, and in no such testing after August 3, 2012.

22           c. Respondent violated Condition No. 17 of the Order by testing positive for alcohol in  
23 random biological fluid testing on two occasions in 2012.

24                                   ORDER

25           IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 110546,  
26 heretofore issued to Respondent Robert Michael Magdaleno, is revoked.

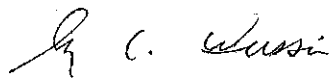
27           Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
28 written motion requesting that the Decision be vacated and stating the grounds relied on within

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on October 25, 2013.

4 It is so ORDERED ON September 25, 2013.

5 BOARD OF PHARMACY  
6 DEPARTMENT OF CONSUMER AFFAIRS  
7 STATE OF CALIFORNIA

8   
9 By \_\_\_\_\_  
10 STANLEY C. WEISSER  
11 Board President

12 Attachment:  
13 Exhibit A: Petition to Revoke Probation  
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Attorney General of California  
2 LINDA K. SCHNEIDER  
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Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0378  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

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

Case No. 4540

12 **ROBERT MICHAEL MAGDALENO**  
13 **3349 Euclid Ave.**  
14 **Stockton, California 95204**

**PETITION TO REVOKE PROBATION**

15 **Pharmacy Technician License No. TCH 110546**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 18, 2012, the Board of Pharmacy issued Original Pharmacy  
22 Technician License Number TCH 110546 to Robert Magdaleno (Respondent). The license was  
23 in effect at all times relevant to the charges brought herein and will expire on December 31, 2013  
24 unless renewed.

25 ///

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27 ///

3. In a disciplinary action entitled "In the Matter of the Statement of Issues Against Robert Michael Magdaleno," Case No. 4178, the Board of Pharmacy issued a Stipulated Settlement and Disciplinary Order, effective May 18, 2012, whereby Respondent was to be issued a probationary license upon satisfaction of meeting all statutory and regulatory requirements. Following the satisfaction of this condition, Respondent was issued Pharmacy Technician License No. TCH 110546, and the license was immediately revoked. Revocation was stayed, and the license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation 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.

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4178 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

## FACTUAL BACKGROUND

7. On or about July 12, 2011, the Board denied Robert Magdaleno's Application for Registration as a Pharmacy Technician due to criminal convictions by the San Joaquin County Superior Court (Case No. 07769SR and Case No. SP05-66542) for driving under the influence of alcohol with a blood alcohol level of .15% and .16%.

8. Effective May 18, 2012, pursuant to a Stipulated Settlement and Disciplinary Order adopted by the Board in Statement of Issues No. 4178, Respondent was to be issued a probationary license upon satisfaction of meeting all statutory and regulatory requirements. Following the satisfaction of this condition, Respondent was issued Pharmacy Technician License No. TCH 110546, and the license was immediately revoked. Revocation was stayed, and the license was placed on probation for a period of three (3) years, subject to terms and conditions, including the

1 requirements that Respondent shall attend a Board-approved substance abuse recovery relapse  
2 prevention and support group, shall participate in random drug screening and shall abstain from  
3 drugs and alcohol use.

#### 4 FIRST CAUSE TO REVOKE PROBATION

##### 5 **(Failure to Submit Proof of Attendance of Substance Abuse Support Group)**

6 9. At all times after the effective date of the Decision and Order imposing probation on  
7 Respondent's license, Term and Condition 15 of that Order required:

8 **15. Attend Substance Abuse Recovery Relapse Prevention and Support**  
9 **Groups.** This term of probation shall apply if Respondent receives a confirmed  
10 positive during the random drug screening provided by Condition No. 17 hereof. In  
11 that event, and immediately upon receipt of notice from the Board or its designee,  
12 Respondent shall begin regular attendance at a recognized and established substance  
13 abuse recovery support group in California (e.g. Alcoholics Anonymous, Narcotics  
14 Anonymous, etc.) which has been approved by the board or its designee.  
Respondent must attend at least one group meeting per week unless otherwise  
directed by the Board 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.

15 10. Respondent's probation is subject to revocation as he failed to comply with Term and  
16 Condition 15 of his probation, listed above. Respondent tested positive for ETG/ETS (Alcohol)  
17 in random drug screenings on July 16, 2012 and July 24, 2012. Respondent has failed to submit  
18 proof of attendance at a Board-approved recognized and established substance abuse recovery  
support group in California.

#### 19 SECOND CAUSE TO REVOKE PROBATION

##### 20 **(Failure to Report and Submit to Random Drug Screening)**

21 11. At all times after the effective date of the Decision and Order imposing probation on  
22 Respondent's license, Term and Condition 16 of that Order required in pertinent part:

23  
24 **16. Random Drug Screening.** Respondent, at his own expense, shall participate in  
25 random testing, including but not limited to biological fluid testing (urine, blood),  
26 breathalyzer, hair follicle testing, or other drug screening program as directed by the  
27 board or its designee. Respondent may be required to participate in testing for the  
28 entire probation period and the frequency of testing will be determined by the board or  
its designee. At all times respondent shall fully cooperate with the Board or its  
designee, and shall, when directed, submit to such tests and samples for the detection  
of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the

board or its designee may direct. Failure to timely submit to testing as directed 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 shall result in automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

12. Respondent's probation is subject to revocation because he failed to comply with the Term and Condition 16 of his probation, listed above. Respondent failed to report daily on May 29-June 3, 2012, July 1, 2012, July 27, 2012, or on any subsequent date. Respondent failed to submit to random drug screening with the contracted lab services vendor as scheduled on August 3, 2012, or on any subsequent date..

### THIRD CAUSE TO REVOKE PROBATION

#### **(Failure to Abstain from Drugs and Alcohol Use)**

13. At all times after the effective date of the Decision and Order imposing probation on Respondent's license, the Term and Condition 17 of that Order required in pertinent part:

**17. Abstain from Drugs and Alcohol.** 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.

...

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.

14. Respondent's probation is subject to revocation as he failed to comply with Term and Condition 17 of his probation, listed above. Respondent tested positive for ETG/ETS on July 16, 2012 and July 24, 2012 through the Board's random drug screening program.

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PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4178 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician License No. TCH 110546, issued to Robert Michael Magdaleno (Respondent);

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

DATED: 6/5/13

  
VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

## **Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 4178**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 STERLING A. SMITH  
Deputy Attorney General  
4 State Bar No: 84287  
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Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0378  
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7 Attorneys for Board of Pharmacy

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:

Case No. 4178

12 ROBERT MICHAEL MAGDELANO  
13 20 East Willow Street  
Stockton, CA 95202  
14 Pharmacy Technician License

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

15 Respondent.

16  
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  
21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
22 She brought this action solely in her official capacity and is represented in this matter by Kamala  
23 D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney  
24 General.

25 2. Respondent Robert Michael Magdelano (Respondent) is representing himself in this  
26 proceeding and has chosen not to exercise his right to be represented by counsel.  
27  
28

3. On or about December 15, 2010, Respondent filed an application dated December 15, 2010, with the Board of Pharmacy to obtain a/an Pharmacy Technician License.

## JURISDICTION

4. Statement of Issues No. 4178 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on February 29, 2012. A copy of Statement of Issues Case No. 4178 is attached as exhibit A and incorporated herein by reference.

### ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues Case No. 4178. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues Case No. 4178.

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

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CONTINGENCY

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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory requirements for issuance of a Pharmacy Technician License, Respondent Robert Michael Magdelano will be issued a Pharmacy Technician License that is immediately revoked by the Board of Pharmacy (Board). The revocation will be stayed and the Respondent placed on three (3) years probation on the following terms and conditions.

1           1.    Certification Prior to Resuming Work

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

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

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

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

20           2.    Obey All Laws

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

22           Respondent shall report any of the following occurrences to the Board, in writing, within  
23 seventy-two (72) hours of such occurrence:

- 24           ☐ an arrest or issuance of a criminal complaint for violation of any provision of the  
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
26 substances laws  
27           ☐ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
28 criminal complaint, information or indictment

1       ☐ a conviction of any crime

2       ☐ discipline, citation, or other administrative action filed by any state or federal agency  
3       which involves Respondent's pharmacy technician license or which is related to the  
4       practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,  
5       or charging for any drug, device or controlled substance.

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

7       3.     Report to the Board

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

16      4.     Interview with the Board

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

22      5.     Cooperate with Board Staff

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

26      6.     Notice to Employers

27      During the period of probation, Respondent shall notify all present and prospective  
28      employers of the decision in Case No. 4178 and the terms, conditions and restrictions imposed on

1 Respondent by the decision, as follows:

2     Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
3 respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
4 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
5 tenure of employment) and owner to report to the Board in writing acknowledging that the listed  
6 individual(s) has/have read the decision in Case No. 4178 and the terms and conditions imposed  
7 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
8 supervisor(s) submit timely acknowledgement(s) to the Board.

9     If Respondent works for or is employed by or through a pharmacy employment service,  
10 Respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy  
11 of the terms and conditions of the decision in Case No. 4178 in advance of the Respondent:  
12 commencing work at each pharmacy. A record of this notification must be provided to the Board  
13 upon request.

14     Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
15 (15) days of Respondent undertaking any new employment by or through a pharmacy  
16 employment service, Respondent shall cause his direct supervisor with the pharmacy employment  
17 service to report to the Board in writing acknowledging that he has read the decision in Case No.  
18 4178 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to  
19 ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

28     ///



1           7.    Probation Monitoring Costs

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

6           8.    Status of License

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

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

14          9.    License Surrender While on Probation/Suspension

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

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

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

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

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

11. Tolling of Probation

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

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

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

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

1        forth (40) hours as a pharmacy technician as defined by Business and Professions  
2        Code section 4115.

3        12.    Violation of Probation

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

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

16       13.    Completion of Probation

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

19       14.    No Ownership of Licensed Premises

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

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

28       This term of probation shall apply if Respondent receives a confirmed positive during the

1 random drug screening provided by Condition No. 17 hereof. In that event, and immediately upon  
2 receipt of notice from the Board or its designee, Respondent shall begin regular attendance at a  
3 recognized and established substance abuse recovery support group in California, (e.g.,  
4 Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its  
5 designee. Respondent must attend at least one group meeting per week unless otherwise directed  
6 by the board or its designee. Respondent shall continue regular attendance and submit signed and  
7 dated documentation confirming attendance with each quarterly report for the duration of  
8 probation. Failure to attend or submit documentation thereof shall be considered a violation of  
9 probation.

#### 10 16. Random Drug Screening

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

27 During suspension, Respondent shall not enter any pharmacy area or any portion of or any  
28 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other

distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

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

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

#### 17. 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.

#### 18. Criminal Probation/Parole Reports


Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within ten (10) days of the issuance or the modification of those conditions. Respondent shall provide the name of his probation/parole officer to the Board, in writing, within ten (10) days after that officer is designated or a replacement for that officer is designated.

Respondent shall provide a copy of all criminal probation/parole reports to the Board within ten (10) days after Respondent receives a copy of such a report.

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 License. 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: 3-2-12

  
ROBERT MICHAEL MAGDELANO  
Respondent

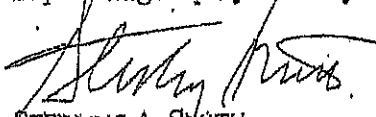
ENDORSEMENT

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: 3-5-2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
ARTHUR D. TAGGART  
Supervising Deputy Attorney General

  
STERLING A. SMITH  
Deputy Attorney General  
Attorneys for Complainant