



California State Board of Pharmacy
 1625 N. Market Blvd, N219, Sacramento, CA 95834
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 www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

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 BOARD OF PHARMACY

2014 OCT - 2 PM 2:09

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Michelle Meyer</u>	Case No. <u>AC 4656</u>
Address of Record: <u>1741 1/2 30th St.</u> <u>SAN DIEGO CA 92102</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 4656, I hereby request to surrender my pharmacy technician license, License No. 80235. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Meyer
 Applicant's Signature

8/30/14
 Date

Christine Heald
 Executive Officer's Approval

10/3/14
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

Case No. 4656

MICHELLE LYNN AYER
6513 Reflection Drive, 109
San Diego, CA 92124

Pharmacy Technician Registration No.
TCH 80235

Respondent.

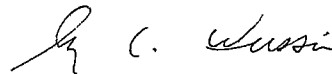
DECISION AND ORDER

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 July 9, 2014.

It is so ORDERED on July 2, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **MICHELLE LYNN AYER**
13 **6513 Reflection Drive, 109**
14 **San Diego, CA 92124**

15 **Pharmacy Technician Registration No. TCH**
16 **80235**

17 Respondent.

Case No. 4656

OAH No. 2013100524

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

20 PARTIES

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 Nicole R. Trama, Deputy Attorney
24 General.

25 2. Respondent Michelle Lynn Ayer ("Respondent") is representing herself in this
26 proceeding and has chosen not to exercise her right to be represented by counsel.
27
28

1 10. Respondent agrees that her Pharmacy Technician Registration is subject to discipline
2 and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary
3 Order below.

4 CONTINGENCY

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

14 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
15 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
16 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

23 14. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Board may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:
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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 80235 issued
3 to Respondent Michelle Lynn Ayer (Respondent) is revoked. However, the revocation is stayed
4 and Respondent is placed on probation for five (5) years on the following terms and conditions.

5 **1. Certification Prior to Resuming Work**

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

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

20 Subject to the above restrictions, Respondent may continue to own or hold an interest in
21 any licensed premises by the Board in which she holds an interest at the time this decision
22 becomes effective unless otherwise specified in this order.

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

24 **2. Obey All Laws**

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

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

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

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

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

5 a conviction of any crime

6 discipline, citation, or other administrative action filed by any state or federal agency

7 which involves Respondent's pharmacy technician license or which is related to the
8 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
9 or charging for any drug, device or controlled substance.

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

11 **3. Report to the Board**

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

20 **4. Interview with the Board**

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

26 **5. Cooperate with Board Staff**

27 Respondent shall cooperate with the Board's inspection program and with the Board's
28 monitoring and investigation of Respondent's compliance with the terms and conditions of her

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

2 **6. Notice to Employers**

3 During the period of probation, Respondent shall notify all present and prospective
4 employers of the decision in case number 4656 and the terms, conditions and restrictions imposed
5 on Respondent by the decision, as follows:

6 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
7 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
8 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
9 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
10 individual(s) has/have read the decision in case number 4656 and the terms and conditions
11 imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
12 supervisor(s) submit timely acknowledgement(s) to the Board.

13 If Respondent works for or is employed by or through a pharmacy employment service,
14 Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy
15 of the terms and conditions of the decision in case number 4656 in advance of the Respondent
16 commencing work at each pharmacy. A record of this notification must be provided to the Board
17 upon request.

18 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
19 (15) days of Respondent undertaking any new employment by or through a pharmacy
20 employment service, Respondent shall cause her direct supervisor with the pharmacy
21 employment service to report to the Board in writing acknowledging that she has read the
22 decision in case number 4656 and the terms and conditions imposed thereby. It shall be
23 Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
24 acknowledgment(s) to the Board.

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

28 "Employment" within the meaning of this provision shall include any full-time,

1 part-time, temporary or relief service or pharmacy management service as a pharmacy
2 technician or in any position for which a pharmacy technician license is a requirement
3 or criterion for employment, whether the Respondent is considered an employee,
4 independent contractor or volunteer.

5 **7. Reimbursement of Board Costs**

6 As a condition precedent to successful completion of probation, Respondent shall pay to the
7 Board its costs of investigation and prosecution in the amount of \$1,845.00. Respondent shall
8 make said payments as follows: Commencing on the effective date of this decision and on the
9 first of each month thereafter, Respondent shall pay \$50.00 per month to the Board, until the costs
10 are paid in full. There shall be no deviation from this schedule absent prior written approval by
11 the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a
12 violation of probation.

13 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility
14 to reimburse the Board its costs of investigation and prosecution.

15 **8. Probation Monitoring Costs**

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

20 **9. Status of License**

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

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

28

1 **10. License Surrender While on Probation/Suspension**

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

10 Upon acceptance of the surrender, Respondent shall relinquish her pharmacy technician
11 license to the Board within ten (10) days of notification by the Board that the surrender is
12 accepted. Respondent may not reapply for any license, permit, or registration from the Board for
13 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
14 applicable to the license sought as of the date the application for that license is submitted to the
15 Board.

16 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
17 **Employment**

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

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

25 **12. Tolling of Probation**

26 Except during periods of suspension, Respondent shall, at all times while on probation, be
27 employed as a pharmacy technician in California for a minimum of forty (40) hours per calendar
28 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,

1 the period of probation shall be extended by one month for each month during which this
2 minimum is not met. During any such period of tolling of probation, Respondent must
3 nonetheless comply with all terms and conditions of probation.

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

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

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

18 **13. Violation of Probation**

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

24 If Respondent violates probation in any respect, the Board, after giving Respondent notice
25 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
26 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
27 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
28 a petition to revoke probation or an accusation is filed against Respondent during probation, the

1 Board shall have continuing jurisdiction, and the period of probation shall be automatically
2 extended until the petition to revoke probation or accusation is heard and decided.

3 **14. Completion of Probation**

4 Upon written notice by the Board indicating successful completion of probation,
5 Respondent's pharmacy technician license will be fully restored.

6 **15. No Ownership of Licensed Premises**

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

14 **16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

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

23 **17. Random Drug Screening**

24 Respondent, at her own expense, shall participate in random testing, including but not
25 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
26 screening program as directed by the Board or its designee. Respondent may be required to
27 participate in testing for the entire probation period and the frequency of testing will be
28 determined by the Board or its designee. At all times Respondent shall fully cooperate with the

1 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
2 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
3 its designee may direct. Failure to timely submit to testing as directed shall be considered a
4 violation of probation. Upon request of the Board or its designee, Respondent shall provide
5 documentation from a licensed practitioner that the prescription for a detected drug was
6 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely
7 provide such documentation shall be considered a violation of probation. Any confirmed positive
8 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
9 documented medical treatment shall be considered a violation of probation and shall result in the
10 automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy
11 technician until notified by the Board in writing.

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

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

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

25 **18. Work Site Monitor**

26 Within ten (10) days of the effective date of this decision, Respondent shall identify a work
27 site monitor, for prior approval by the Board, who shall be responsible for supervising
28 Respondent during working hours. Respondent shall be responsible for ensuring that the work

1 site monitor reports in writing to the Board quarterly. Should the designated work site monitor
2 determine at any time during the probationary period that Respondent has not maintained
3 sobriety, she shall notify the Board immediately, either orally or in writing as directed. Should
4 Respondent change employment, a new work site monitor must be designated, for prior approval
5 by the Board, within ten (10) days of commencing new employment. Failure to identify an
6 acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to
7 the Board, shall be considered a violation of probation.

8 **19. Notification of Departure**

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

13 **20. Abstain from Drugs and Alcohol Use**

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

25 **21. Prescription Coordination and Monitoring of Prescription Use**

26 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
27 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
28 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the

1 Respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs, and
2 who will coordinate and monitor any prescriptions for Respondent for dangerous drugs,
3 controlled substances or mood-altering drugs. The approved practitioner shall be provided with a
4 copy of the Board's accusation and decision. A record of this notification must be provided to the
5 Board upon request. Respondent shall sign a release authorizing the practitioner to communicate
6 with the Board about Respondent's treatment(s). The coordinating physician, nurse practitioner,
7 physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of
8 probation regarding Respondent's compliance with this condition. If any substances considered
9 addictive have been prescribed, the report shall identify a program for the time limited use of any
10 such substances. The Board may require that the single coordinating physician, nurse practitioner,
11 physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in
12 addictive medicine. Should Respondent, for any reason, cease supervision by the approved
13 practitioner, Respondent shall notify the Board immediately and, within thirty (30) days of
14 ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician
15 assistant, or psychiatrist of Respondent's choice to the Board or its designee for its prior approval.
16 Failure to timely submit the selected practitioner or replacement practitioner to the Board for
17 approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered
18 a violation of probation.

19 If at any time an approved practitioner determines that Respondent is unable to practice
20 safely as a pharmacy technician, the practitioner shall notify the Board immediately by telephone
21 and follow up by written letter within three (3) working days. Upon notification from the Board
22 or its designee of this determination, Respondent shall be automatically suspended and shall not
23 resume practice until notified by the Board that practice may be resumed.

24 During suspension, Respondent shall not enter any pharmacy area or any portion of or any
25 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
26 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
27 devices or controlled substances are maintained. Respondent shall not do any act involving drug
28 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent

1 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
2 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
3 substances. Respondent shall not resume work until notified by the Board.

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

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


9 ACCEPTANCE

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

14
15 DATED: 5/19/14 
16 MICHELLE LYNN AYER
17 Respondent

18 ENDORSEMENT

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

21 Dated: 5/23/14 Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 JAMES M. LEDAKIS
25 Supervising Deputy Attorney General
26 
27 NICOLE R. TRAMA
28 Deputy Attorney General
Attorneys for Complainant

SD2013805294
70847277.doc

Exhibit A

Accusation No. 4656

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:
13 **MICHELLE LINN AYER**
6513 Reflection Drive, 109
14 San Diego, CA 92124
15 **Pharmacy Technician Registration No. TCH**
80235
16
17 Respondent.

Case No. 4656

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On or about December 14, 2007, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 80235 to Michelle Linn Ayer (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 31, 2015, unless renewed.

27 ///
28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render a decision suspending or revoking the license.

13 **STATUTORY PROVISIONS**

14 6. Section 482 of the Code states:

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

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

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

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

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

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or
28 to suspend or revoke a license or otherwise take disciplinary action against a
person who holds a license, upon the ground that the applicant or the licensee has

1 been convicted of a crime substantially related to the qualifications, functions, and
2 duties of the licensee in question, the record of conviction of the crime shall be
3 conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of
5 the crime in order to fix the degree of discipline or to determine if the conviction is
6 substantially related to the qualifications, functions, and duties of the licensee in
7 question.

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

10 9. Section 4301 of the Code states:

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

15

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

21

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

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

.....

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

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COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(August 16, 2012 Criminal Conviction for DUI on July 15, 2012)

13. Respondent has subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about August 16, 2012, in a criminal proceeding entitled *People of the State of*
2 *California v. Michelle Linn Ayer*, Sacramento Superior Court, case number 12T04117,
3 Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152(b),
4 driving with a blood alcohol content of .08 percent or more, a misdemeanor. Respondent also
5 admitted and the Court found true an enhancement under Vehicle Code section 23578, for having
6 a blood content of .15 percent or more.

7 b. The circumstances surrounding the conviction are that on or about July 15, 2012 at
8 approximately 1:40 a.m. an officer from the Sacramento County Sheriff's Office observed
9 Respondent driving her car on La Riviera Drive eastbound, east of Salmon Falls Drive. The
10 officer observed Respondent driving in the bicycle lane and on the two right turn lane dividers.
11 Respondent stopped her car twice for no apparent reason. Following these observations, the
12 officer initiated a traffic stop. During the stop, the officer observed signs and symptoms of
13 alcohol intoxication, he detained Respondent and thereafter turned the DUI investigation over to
14 the California Highway Patrol.

15 c. Upon arriving on the scene, the California Highway Patrol (CHP) officer conducted a
16 Field Sobriety Test on Respondent. The CHP officer smelled alcohol emitting from
17 Respondent's breath and he observed that Respondent's eyes were red and watery, and that she
18 was unsteady and off balance as she walked. When asked if she had anything to drink,
19 Respondent admitted to the CHP officer that she had one bottle of Sapporo. The officer
20 administered Field Sobriety Tests, which Respondent failed. The officer then placed Respondent
21 under arrest for driving under the influence. Respondent's blood alcohol content was .24 percent.

22 d. As a result of the conviction Respondent was ordered to serve 36 months summary
23 probation, required to serve 2 days in custody with credit for time served, ordered to pay all fines,
24 fees and restitution, required to enroll and complete the First Offender DUI program.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

27 14. Respondent has subjected her license to disciplinary action under section 4301,
28 subdivision (h) of the Code in that on or about July 15, 2012, Respondent drove a vehicle while

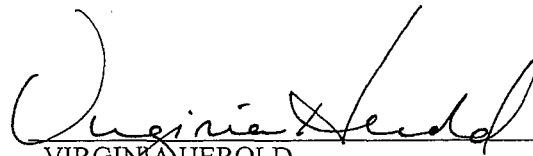
1 under the influence of an alcoholic beverage, which posed a serious risk of injury and/or death to
2 herself and to the public, as detailed in paragraph 13, above, and which are incorporated herein by
3 reference.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80235,
8 issued to Michelle Linn Ayer;
- 9 2. Ordering Michelle Linn Ayer to pay the Board of Pharmacy the reasonable costs of
10 the investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

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14
15 DATED: 9/6/13



16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
State of California
Complainant

20 SD2013805294
21 70616247.doc