

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

In the Matter of the Petition to Revoke Probation
Against:

Case No. 5209

FILIMON LOPEZ
29757 Niguel Road, #H
Laguna Niguel, CA 92677

**Pharmacy Technician Registration
No. TCH 35419**

Respondent.

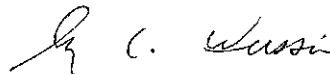
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Surrender and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 5, 2015.

It is so ORDERED on December 29, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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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
12 Probation Against:

12 **FILIMON M. LOPEZ**
13 **29757 Niguel Road, #H**
14 **Laguna Niguel, CA 92677**

14 **Pharmacy Technician Registration No. TCH**
15 **35419**

16 Respondent.

Case No. 5209

12 **STIPULATED SURRENDER OF**
13 **LICENSE AND 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 Diane de Kervor, Deputy Attorney
24 General.

25 2. Filimon M. Lopez (Respondent) is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.

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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Petition to
3 Revoke Probation No. 5209, agrees that cause exists for discipline and hereby surrenders his
4 Pharmacy Technician Registration No. TCH 35419 for the Board's formal acceptance.

5 10. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Pharmacy Technician Registration without further process.

7 CONTINGENCY

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

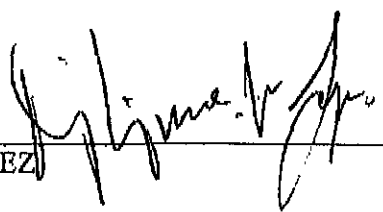
17 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
18 copies of this Stipulated Surrender of License and Order, including Portable Document Format
19 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following Order:
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DATED: 9-30-14



FILIMON M. LOPEZ
Respondent

ENDORSEMENT

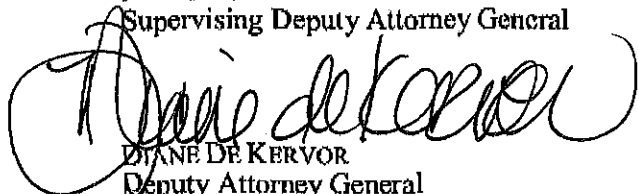
The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

October 7, 2014

Respectfully submitted,

KAMAILA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



DIANE DE KERVOR
Deputy Attorney General
Attorneys for Complainant

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

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

Case No. 5209

13 **FILIMON M. LOPEZ**
29757 Niguel Road, #H
14 Laguna Niguel, CA 92677

PETITION TO REVOKE PROBATION

15 **Pharmacy Technician Registration**
16 **No. TCH 35419**

Respondent.

17
18 Complainant alleges:

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 December 11, 2000, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 35419 to Filimon M. Lopez (Respondent). The Pharmacy Technician
25 Registration expired on May 31, 2014, and has not been renewed.

26 3. In a disciplinary action entitled "*In the Matter of Accusation Against Filimon M.*
27 *Lopez*," Case No. 3314, the Board of Pharmacy issued a decision effective February 17, 2011, in
28 which Respondent's Pharmacy Technician Registration was revoked. However, the revocation

1 was stayed and Respondent's Pharmacy Technician Registration was placed on probation for a
2 period of five (5) years with certain terms and conditions. A copy of that decision is attached as
3 Exhibit A and is incorporated by reference.

4 JURISDICTION

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

7 5. Section 4300.1 of the Code states:

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

14 6. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),
15 Department of Consumer Affairs under Probation Term and Condition Number 14 of the
16 Decision and Order. That term and condition states:

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

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

23 FIRST CAUSE TO REVOKE PROBATION

24 (Certification Prior to Resuming Work)

25 7. At all times after the effective date of Respondent's probation, Condition 2 stated:

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

1 probation. Respondent shall not resume working as a pharmacy technician until
2 notified by the board.

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

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

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

17 8. Respondent's probation is subject to revocation because he failed to comply with
18 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
19 are as follows:

20 a. On February 22, 2011, Respondent attended an office conference with the
21 Board to discuss and review the terms and conditions of his probation. Respondent signed a
22 declaration stating that he appeared before the Board, that the terms and condition of his
23 probation were fully explained to him, that he understood the terms and conditions, and he
24 acknowledged that failure to comply could result in further disciplinary action.

25 b. Respondent was told that he was automatically suspended from working as a
26 pharmacy technician until he provided satisfactory proof that he was certified by the Pharmacy
27 Technician Certification Board pursuant to Code section 4202(a)(4) within one year of the
28 effective date of the Order.

c. On July 21, 2011, Respondent attended an office conference with the Board to
discuss and review his noncompliance with the terms and conditions of his probation.
Respondent signed a declaration stating that he appeared before the Board, that the terms and
condition of his probation were fully explained to him, that he understood the terms and
conditions, and he acknowledged that failure to comply could result in further disciplinary action.

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1 d. On March 1, 2012, the Board mailed a letter to Respondent stating that he was
2 noncompliant with Condition 2 because he failed to submit proof of obtaining certification by the
3 February 17, 2012 deadline. On April 26, 2012, the Board mailed a letter to Respondent and
4 acknowledged receipt of his PTCB certification, and the suspension on his registration was lifted.

5 **SECOND CAUSE TO REVOKE PROBATION**

6 **(Status of License)**

7 9. At all times after the effective date of Respondent's probation, Condition 10 stated:

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

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

17 10. Respondent's probation is subject to revocation because he failed to comply with
18 Probation Condition 10, referenced above in that he allowed his pharmacy technician registration
19 to expire on May 31, 2014.

20 **THIRD CAUSE TO REVOKE PROBATION**

21 **(Attend Substance Abuse Recovery Relapse Prevention and Support Groups)**

22 11. At all times after the effective date of Respondent's probation, Condition 17 stated:

23 Within thirty (30) days of the effective date of this decision, respondent shall
24 begin regular attendance at a recognized and established substance abuse recovery
25 support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous,
26 etc.) which has been approved by the board or its designee. Respondent must attend
27 at least one group meeting per week unless otherwise directed by the board or its
28 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. Respondent's probation is subject to revocation because he failed to comply with
Probation Condition 17, referenced above. The facts and circumstances regarding this violation
are as follows:

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1 a. On February 22, 2011, Respondent attended an office conference with the
2 Board to discuss and review the terms and conditions of his probation. Respondent signed a
3 declaration stating that he appeared before the Board, that the terms and condition of his
4 probation were fully explained to him, that he understood the terms and conditions, and he
5 acknowledged that failure to comply could result in further disciplinary action.

6 b. On April 5, 2011, the Board mailed a letter to Respondent stating that he was
7 noncompliant with Condition 17 because he failed to submit a substance abuse support group for
8 approval or begin attendance at a support group by the March 19, 2011 deadline.

9 c. On July 21, 2011, Respondent attended an office conference with the Board to
10 discuss and review his noncompliance with the terms and conditions of his probation.
11 Respondent signed a declaration stating that he appeared before the Board, that the terms and
12 condition of his probation were fully explained to him, that he understood the terms and
13 conditions, and he acknowledged that failure to comply could result in further disciplinary action.
14 Respondent has not submitted for approval a substance abuse support group, or provided proof of
15 attendance at a support group.

16 FOURTH CAUSE TO REVOKE PROBATION

17 (Random Drug Screening)

18 13. At all times after the effective date of Respondent's probation, Condition 18 stated:

19 Respondent, at his own expense, shall participate in random testing, including
20 but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle
21 testing, or other drug screening program as directed by the board or its designee.
22 Respondent may be required to participate in testing for the entire probation period
23 and the frequency of testing will be determined by the board or its designee. At all
24 times respondent shall fully cooperate with the board or its designee, and shall, when
25 directed, submit to such tests and samples for the detection of alcohol, narcotics,
26 hypnotics, dangerous drugs or other controlled substances as the board or its designee
27 may direct. Failure to timely submit to testing as directed shall be considered a
28 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 shall result in the automatic
suspension of work by respondent. Respondent may not resume work as a pharmacy
technician until notified by the board in writing.

1 During suspension, respondent shall not enter any pharmacy area or any portion
2 of or any other board licensed premises (wholesaler, veterinary food-animal drug
3 retailer or any other distributor of drugs) any drug manufacturer, or any other location
4 where dangerous drugs and devices or controlled substances are maintained.

5 Respondent shall not do any act involving drug selection, selection of stock,
6 manufacturing, compounding or dispensing; nor shall respondent manage, administer,
7 or assist any licensee of the board. Respondent shall not have access to or control the
8 ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
9 substances. Respondent shall not resume work until notified by the board.

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

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

16 14. Respondent's probation is subject to revocation because he failed to comply with
17 Probation Condition 18, referenced above. The facts and circumstances regarding this violation
18 are as follows:

19 a. On February 22, 2011, Respondent attended an office conference with the
20 Board to discuss and review the terms and conditions of his probation. Respondent signed a
21 declaration stating that he appeared before the Board, that the terms and condition of his
22 probation were fully explained to him, that he understood the terms and conditions, and he
23 acknowledged that failure to comply could result in further disciplinary action.

24 b. On March 22, 2011, Respondent submitted to a hair follicle drug-screening test.
25 The results of the test were positive for cocaines, opiates, and oxycodone. On March 29, 2011,
26 the Board mailed Respondent a Notice of Suspension and directed him to submit a written
27 explanation for the positive drug test, as well as legible copies of any and all recent prescriptions
28 for dangerous drugs and controlled substances. On April 5, 2011, the Board received a letter
from Respondent providing a prescription for Vicodin, but he did not provide a legitimate
explanation for the remaining positive drug tests.

c. Respondent missed a drug test on April 7, 2011, and failed to call FirstLab on
June 11, 2011. Respondent received letters from the Board regarding the violations.

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1 d. On July 21, 2011, Respondent attended an office conference with the Board to
2 discuss and review his noncompliance with the terms and conditions of his probation.
3 Respondent signed a declaration stating that he appeared before the Board, that the terms and
4 condition of his probation were fully explained to him, that he understood the terms and
5 conditions, and he acknowledged that failure to comply could result in further disciplinary action.

6 e. Respondent missed a drug test on September 24, 2012, and tested positive for
7 hydrocodone and hydromorphone in sample collected on October 22, 2012. On October 30,
8 2012, the Board mailed Respondent a Notice of Suspension for the positive drug test and directed
9 him to submit a written explanation for the positive drug test, as well as legible copies of any and
10 all recent prescriptions for dangerous drugs and controlled substances. After the Board received a
11 letter from Respondent providing a prescription for Norco on November 5, 2012, 2011, the
12 suspension was lifted.

13 f. Respondent tested positive for Tramadol on October 10 and October 15, 2013.
14 On October 18, 2013, the Board mailed Respondent a Notice of Suspension for the positive drug
15 tests and directed him to submit a written explanation for the positive drug tests, as well as legible
16 copies of any and all recent prescriptions for dangerous drugs and controlled substances.
17 Respondent provided a letter stating that he had been exposed to Tramadol tablets and loose
18 powder while working at a pharmacy. The pharmacy's pharmacist-in-charge provided a
19 statement in which he confirmed that Respondent filled two prescriptions for Tramadol on
20 October 5 and October 9, 2013. The Medical Review Officer at FirstLab stated the drug test
21 results indicated Tramadol ingestion rather than exposure while dispensing Tramadol.

22 FIFTH CAUSE TO REVOKE PROBATION

23 (Abstain from Drugs and Alcohol Use)

24 15. At all times after the effective date of Respondent's probation, Condition 21 stated:

25 Respondent shall completely abstain from the possession or use of alcohol,
26 controlled substances, dangerous drugs and their associated paraphernalia except
27 when the drugs are lawfully prescribed by a licensed practitioner as part of a
28 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

1 violation of probation. Respondent shall ensure that he is not in the same physical
2 location as individuals who are using illicit substances even if respondent is not
3 personally ingesting the drugs. Any possession or use of alcohol, controlled
4 substances, or their associated paraphernalia not supported by the documentation
5 timely provided, and/or any physical proximity to persons using illicit substances,
6 shall be considered a violation of probation.

7 16. Respondent's probation is subject to revocation because he failed to comply with
8 Probation Condition 21, referenced above. As described in paragraph 14, above, Respondent
9 tested positive for controlled substances and dangerous drugs that were not lawfully prescribed by
10 a licensed practitioner as part of a documented medical treatment.

11 DISCIPLINARY CONSIDERATIONS

12 17. To determine the degree of discipline, if any, to be imposed on Respondent,
13 Complainant alleges that on or about September 17, 2009, in a prior disciplinary action entitled *In*
14 *the Matter of the Accusation Against Filimon M. Lopez*, before the Board of Pharmacy in Case
15 No. 3314, an Accusation was filed alleging that Respondent's license was subject to discipline
16 based on a 2005 criminal conviction for driving under the influence of alcohol (under Bus. &
17 Prof. Code, §§ 4300 and 4301(h), (k), and (l)), a 2005 criminal conviction for second degree
18 burglary and false representation to a police officer (under Bus. & Prof. Code, §§ 4300 and 4301
19 (f) and (l)), and a 2005 criminal conviction for petty theft and possession of a controlled
20 substance without a prescription (under Bus. & Prof. Code, §§ 4300 and 4301(f), (j), (l) and (o)).

21 PRAYER

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

24 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3314
25 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician
26 Registration No. TCH 35419 issued to Filimon M. Lopez;

27 2. Revoking or suspending Pharmacy Technician Registration No. TCH 35419, issued
28 to Filimon M. Lopez;

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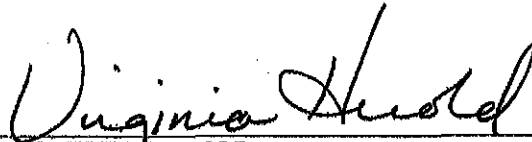
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3. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/11/14



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

SD2014707319