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7

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

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

Case No. 4690

13 **EULALIO JAVIER LOMELI**  
14 **43910 W. Colby Dr.**  
**Mancopa, AZ 85138**  
15 **Pharmacy Technician Registration No. TCH**  
**94369**

**PETITION TO REVOKE PROBATION**

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 the Executive Officer of the Board of Pharmacy, Department of Consumer  
21 Affairs.

22 2. On or about October 19, 2011, the Board of Pharmacy issued Original Pharmacy  
23 Technician Registration Number TCH 94369 to Eulalio Lomeli (Respondent). The Pharmacy  
24 Technician Registration was suspended on October 21, 2011 and expired on November 30, 2012.

25 3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Eulalio  
26 Lomeli," Case No. 3739, the Board of Pharmacy issued a decision, effective October 19, 2011,  
27 whereby Respondent was to be issued a probationary Pharmacy Technician Registration upon  
28 satisfaction of meeting all statutory and regulatory requirements. Following the satisfaction of

1 this condition, Respondent was issued Pharmacy Technician Registration No. TCH 94369, and  
2 the Registration was immediately revoked. Revocation was stayed, and the Pharmacy Technician  
3 Registration was placed on probation for a period of four (4) years with certain terms and  
4 conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

#### 5 JURISDICTION

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

9 5. Section 4011 of the Code provides that the Board shall administer and enforce both  
10 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
11 Act [Health & Safety Code, § 11000 et seq.].

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

14 7. Section 4300 (d) of the Code provides that the board may initiate disciplinary  
15 proceedings to revoke or suspend any probationary certificate of licensure for any violation of the  
16 terms and conditions of probation.

17 8. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
18 suspension of a board-issued license shall not deprive the board of jurisdiction to commence or  
19 proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to  
20 render a decision suspending or revoking the license.

#### 21 FIRST CAUSE TO REVOKE PROBATION

##### 22 **(Failure to Submit Proof of Certification Prior to Resuming Work)**

23 9. At all times after the effective date of the decision and order imposing probation on  
24 respondent's Registration, Term and Condition One of that order required:

25 **"1. Certification Prior to Resuming Work.** Applicant shall be  
26 automatically suspended from working as a pharmacy technician until he is certified  
27 as defined by Business and Professions Code section 4202(a)(4) and provides  
28 satisfactory proof of certification to the board. Applicant 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 probation. Applicant shall not  
resume working as a pharmacy technician until notified by the board.

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

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

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

15 10. Respondent's probation is subject to revocation because he failed to comply with  
16 Condition One of his probation, listed above. Respondent failed to achieve certification within  
17 one (1) year of the effective date of the Decision and Order.

18 **SECOND CAUSE TO REVOKE PROBATION**

19 **(Failure to Report to the Board)**

20 11. At all times after the effective date of the Decision and Order imposing probation on  
21 Respondent's Registration, Term and Condition 3 of that Order required:

22 "3. **Report to the Board.** Applicant shall report to the Board quarterly, on a  
23 schedule as directed by the board or its designee. The report shall be made either in  
24 person or in writing, as directed. Among other requirements, Applicant shall state in  
25 each report under penalty of perjury whether there has been compliance with all terms  
26 and conditions of probation. Failure to timely submit reports in a form as directed  
27 shall be considered a violation of probation."

28 12. Respondent's probation is subject to revocation as he failed to comply with Term and  
Condition 3 of that probation, listed above. Respondent has not submitted a quarterly report since  
January 10, 2012.

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1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Failure to Submit Proof of Attendance at Substance Abuse Recovery Relapse**  
3 **Prevention and Support Group)**

4 13. At all times after the effective date of Decision and Order Imposing probation on  
5 Respondent's Registration, Term and Condition 15 of that Order required:

6 **"15. Attend Substance Abuse Recovery Relapse Prevention and Support**  
7 **Groups.** Within 30 days of the effective date of this Decision, Applicant shall begin  
8 regular attendance at a recognized and established substance abuse recovery support  
9 group in California (e.g. Alcoholics Anonymous, Narcotics Anonymous, etc.) which  
10 has been approved by the board or its designee. Applicant must attend at least one  
11 group meeting per week unless otherwise directed by the Board or its designee.  
12 Applicant shall continue regular attendance and submit signed and dated  
13 documentation confirming attendance with each quarterly report for the duration of  
14 probation. Failure to attend or submit documentation thereof shall be considered a  
15 violation of probation.

16 14. Respondent's probation is subject to revocation as he failed to comply with Term and  
17 Condition 15 of that probation, listed above. Respondent failed to submit documentation and  
18 proof of attendance at a Board-approved, recognized and established, substance abuse recovery  
19 support group in California.

20 **FOURTH CAUSE TO REVOKE PROBATION**

21 **(Failure to Participate in Random Drug Screening)**

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

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

1 16. Respondent's probation is subject to revocation because he failed to comply with  
2 Term and Condition 16 of that probation, listed above. Applicant failed to enroll and participate  
3 in the random drug screening program.

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 the probation that was granted by the Board of Pharmacy in Case No. 3739  
8 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician  
9 Registration No. TCH 94369, issued to Eulalio Lomeli (Respondent);

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

11  
12 DATED: 6/5/14 Virginia Herold  
13 VIRGINIA HEROLD  
14 Executive Officer  
15 Board of Pharmacy  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant

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**Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 3739**

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

In the Matter of the Statement of Issues Against:

Case No. 3739

**EULALIO JAVIER LOMELI**

2901 Silver Saddle Street  
Ontario, CA 91761

Applicant for Pharmacy Technician Registration

Respondent.

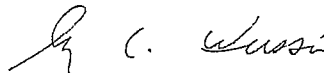
**DECISION AND ORDER**

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 October 19, 2011.

It is so ORDERED on September 19, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 KIMBERLEY J. BAKER-GUILLEMET  
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8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

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

Case No. 3739

12 **EULALIO JAVIER LOMELI**  
2901 Silver Saddle Street  
13 **Ontario, CA 91761**  
**Applicant for Pharmacy Technician**  
14 **Registration**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 Applicant.

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 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
21 She brought this action solely in her official capacity and is represented in this matter by Kamala  
22 D. Harris, Attorney General of the State of California, by Kimberley J. Baker-Guillemet, Deputy  
23 Attorney General.

24 2. Eulalio Javier Lomeli (Applicant) is representing himself in this proceeding and has  
25 chosen not to exercise his right to be represented by counsel.  
26  
27  
28



1           3.     On or about July 14, 2009, Applicant filed an application dated July 7, 2009, with the  
2 Board of Pharmacy to obtain a Pharmacy Technician Registration.

3    JURISDICTION

4           4.     Statement of Issues No. 3739 was filed before the Board of Pharmacy (Board),  
5 Department of Consumer Affairs, and is currently pending against Applicant. The Statement of  
6 Issues and all other statutorily required documents were properly served on Applicant on April  
7 13, 2011. A copy of Statement of Issues No. 3739 is attached as exhibit A and incorporated  
8 herein by reference.

9    ADVISEMENT AND WAIVERS

10          5.     Applicant has carefully read, and understands the charges and allegations in  
11 Statement of Issues No. 3739. Applicant has also carefully read, and understands the effects of  
12 this Stipulated Settlement and Disciplinary Order.

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

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

22    CULPABILITY

23          8.     Applicant admits the truth of each and every charge and allegation in Statement of  
24 Issues No. 3739.

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

28     ///

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Applicant understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Applicant. By signing the stipulation, Applicant 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, 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 a Pharmacy Technician Registration will be issued to Applicant Eulalio Javier Lomeli and immediately revoked. The revocation will be stayed and the Applicant placed on four (4) years probation on the following terms and conditions.

1. **Certification Prior to Resuming Work**

Applicant shall be automatically suspended from working as a pharmacy technician until he

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

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

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

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

18 **2. Obey All Laws**

19 Applicant shall obey all state and federal laws and regulations.

20 Applicant shall report any of the following occurrences to the board, in writing, within  
21 seventy-two (72) hours of such occurrence:

- 22  an arrest or issuance of a criminal complaint for violation of any provision of the  
23 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
24 substances laws
- 25  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
26 criminal complaint, information or indictment
- 27  a conviction of any crime
- 28  discipline, citation, or other administrative action filed by any state or federal agency

1 which involves Applicant's Pharmacy Technician Registration or which is related to  
2 the practice of pharmacy or the manufacturing, obtaining, handling, distributing,  
3 billing, or charging for any drug, device or controlled substance.

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

5 **3. Report to the Board**

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

14 **4. Interview with the Board**

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

20 **5. Cooperate with Board Staff**

21 Applicant shall cooperate with the board's inspection program and with the board's  
22 monitoring and investigation of Applicant's compliance with the terms and conditions of his  
23 probation. Failure to cooperate shall be considered a violation of probation.

24 **6. Notice to Employers**

25 During the period of probation, Applicant shall notify all present and prospective employers  
26 of the decision in case number 3739 and the terms, conditions and restrictions imposed on  
27 Applicant by the decision, as follows:

28 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of

1 Applicant undertaking any new employment, Applicant shall cause his direct supervisor,  
2 pharmacist-in-charge (including each new pharmacist-in-charge employed during Applicant's  
3 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
4 individual(s) has/have read the decision in case number 3739 and the terms and conditions  
5 imposed thereby. It shall be Applicant's responsibility to ensure that his employer(s) and/or  
6 supervisor(s) submit timely acknowledgement(s) to the board.

7 If Applicant works for or is employed by or through a pharmacy employment service,  
8 Applicant must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of  
9 the terms and conditions of the decision in case number 3739 in advance of the Applicant  
10 commencing work at each pharmacy. A record of this notification must be provided to the board  
11 upon request.

12 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
13 (15) days of Applicant undertaking any new employment by or through a pharmacy employment  
14 service, Applicant shall cause his direct supervisor with the pharmacy employment service to  
15 report to the board in writing acknowledging that he has read the decision in case number 3739  
16 and the terms and conditions imposed thereby. It shall be Applicant's responsibility to ensure  
17 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

26 **7. Probation Monitoring Costs**

27 Applicant shall pay any costs associated with probation monitoring as determined by the  
28 board each and every year of probation. Such costs shall be payable to the board on a schedule as

1 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
2 be considered a violation of probation.

3 **8. Status of License**

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

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

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

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

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

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

27 Applicant shall notify the board in writing within ten (10) days of any change of  
28 employment. Said notification shall include the reasons for leaving, the address of the new

1 employer, the name of the supervisor and owner, and the work schedule if known. Applicant  
2 shall further notify the board in writing within ten (10) days of a change in name, residence  
3 address and mailing address, or phone number.

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

#### 6 11. Tolling of Probation

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

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

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

21 "Cessation of work" means calendar month during which Applicant is not  
22 working for at least 20 hours as a pharmacy technician, as defined in Business and  
23 Professions Code section 4115. "Resumption of work" means any calendar month  
24 during which Applicant is working as a pharmacy technician for at least 20 hours as a  
25 pharmacy technician as defined by Business and Professions Code section 4115.

#### 26 12. Violation of Probation

27 If a Applicant has not complied with any term or condition of probation, the board shall  
28 have continuing jurisdiction over Applicant, and probation shall automatically be extended, until

1 all terms and conditions have been satisfied or the board has taken other action as deemed  
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
3 to impose the penalty that was stayed.

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

11 **13. Completion of Probation**

12 Upon written notice by the board indicating successful completion of probation, Applicant's  
13 pharmacy technician license will be fully restored.

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

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

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

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



1 of probation. Failure to attend or submit documentation thereof shall be considered a violation of  
2 probation.

3 **16. Random Drug Screening**

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

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

28 Applicant shall not direct, control or perform any aspect of the practice of pharmacy.

1 Subject to the above restrictions, Applicant may continue to own or hold an interest in any  
2 licensed premises in which he holds an interest at the time this decision becomes effective unless  
3 otherwise specified in this order.

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

5 **17. Work Site Monitor**

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

16 **18. Abstain from Drugs and Alcohol Use**

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

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ACCEPTANCE

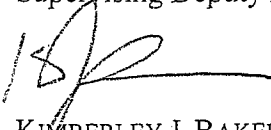
I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Applicant for Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to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

DATED: 6/10/2011   
EULALIO JAVIER LOMELI  
Applicant

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: June 8, 2011

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
MARC D. GREENBAUM  
Supervising Deputy Attorney General  
  
KIMBERLEY J. BAKER-GUILLEMET  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Statement of Issues No. 3739**

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 KIMBERLEY J. BAKER-GUILLEMET  
Deputy Attorney General  
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5 Los Angeles, CA 90013  
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6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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

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

Case No. 3739

12 **EULALIO JAVIER LOMELI**  
13 **3351 Honey Brook Way, 22**  
**Ontario, CA 91761**  
14 **Applicant for Pharmacy Technician**  
**Registration**

**STATEMENT OF ISSUES**

15 Respondent.

16  
17  
18 Complainant alleges:

19 PARTIES

20 1. Virginia K. Herold (Complainant) brings this Statement of Issues solely in her official  
21 capacity as the Executive Officer of the California State Board of Pharmacy (Board).

22 2. On or about July 14, 2009, the California State Board of Pharmacy received an  
23 application for Pharmacy Technician Registration from Eulalio Javier Lomeli (Respondent). On  
24 or about July 7, 2009, Eulalio Javier Lomeli certified under penalty of perjury to the truthfulness  
25 of all statements, answers, and representations in the application. The Board denied the  
26 application on May 4, 2010.

27 ///

28 ///

JURISDICTION

1  
2       3.    This Statement of Issues is brought before the Board under the authority of the  
3 following laws. All section references are to the Business and Professions Code unless otherwise  
4 indicated.

5       4.    Section 4300, subdivision (c) of the Code provides, in pertinent part, that the board  
6 may refuse a license to any applicant guilty of unprofessional conduct.

7       5.    Section 4301 of the Code states:

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

11       ....

12           "(j) The violation of any of the statutes of this state, or any other state, or of the United  
13 States regulating controlled substances and dangerous drugs.

14       ....

15           "(p) Actions or conduct that would have warranted denial of a license."

16       6.    Section 4060 of the Code states:

17  
18           No person shall possess any controlled substance, except that furnished to a  
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
21 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
22 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to  
23 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
24 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
25 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section  
26 shall not apply to the possession of any controlled substance by a manufacturer,  
27 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,  
28 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or  
physician assistant, when in stock in containers correctly labeled with the name and  
address of the supplier or producer.

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1 7. Section 480 of the Code states, in pertinent part, that:

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

4 . . . .

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

7 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
8 substantially related to the qualifications, functions, or duties of the business or profession for  
9 which application is made.

10 8. Section 492 of the Code states:

11 "Notwithstanding any other provision of law, successful completion of any diversion  
12 program under the Penal Code, or successful completion of an alcohol and drug problem  
13 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
14 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
15 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
16 division, from taking disciplinary action against a licensee or from denying a license for  
17 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
18 record pertaining to an arrest.

19 9. Section 125.3 states, in pertinent part, that the Board may request the administrative  
20 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
21 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
22 case.

23 CONTROLLED SUBSTANCE

24 10. "Methamphetamine" is a Schedule II controlled substance as defined in Health and  
25 Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section 4022.

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Possession of a Controlled Substance)

3 11. Respondent's application is subject to denial under section 4301, subdivisions (j) and  
4 (o) of the Code, in that Respondent was found to be in possession of a controlled substance in  
5 violation of section 4060 of the Code and Health and Safety Code section 11377, subdivision (a).  
6 On or about April 21, 2008, during a traffic stop by a police officer from the Colton Police  
7 Department, Respondent was found to be in possession of methamphetamine in violation of  
8 Health and Safety Code section 11377, subdivision (a). As a result, Respondent was ordered to  
9 appear in court in the subsequent proceedings which were entitled *People of the State of*  
10 *California v. Eulalio J. Lomeli* (Super. Ct. San Bernardino County, 2008, No. MSB804950). A  
11 Drug Court Plea Bargain agreement was filed. Respondent pleaded guilty but entry of judgment  
12 was deferred until March 1, 2010, and the criminal proceedings were suspended pursuant to Penal  
13 Code section 1000 and Respondent's compliance with certain terms and conditions, including  
14 enrollment in a Drug Diversion Program.

15 SECOND CAUSE FOR DENIAL OF APPLICATION

16 (Acts Warranting Denial of a License)

17 12. Respondent's application is subject to denial under section 4301, subdivision (p) of  
18 the Code, in that he committed an act that if done by a licentiate would be grounds for suspension  
19 or revocation of his license, in violation of Code section 480, subdivision (a), subparagraph (3),  
20 subsection (A). Complainant refers to, and incorporates, all of the allegations set forth in  
21 paragraph 11, as though set forth fully.

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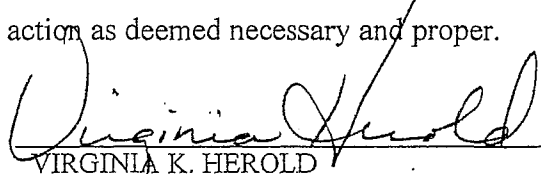
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PRAYER

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

1. Denying the application of Eulalio Javier Lomeli for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/11



VIRGINIA K. HEROLD  
Executive Officer  
California State Board of Pharmacy  
State of California  
*Complainant*

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