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

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

Case No. 5819

12 **JORGE ANTONIO GALVEZ**

PETITION TO REVOKE PROBATION

13 1449 Tamarind Ave., Apt. #3
14 Los Angeles, CA 90028

15 Pharmacy Technician Registration No. TCH
104805

16 Respondent.
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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 (Board).

23 2. On or about December 5, 2013, the Board issued Pharmacy Technician Registration
24 Number TCH 104805 to Jorge Antonio Galvez (Respondent). Said registration expired on
25 September 30, 2015, and was cancelled on January 3, 2016, pursuant to Business and Professions
26 Code (Code) section 4402, subdivision (e).

27 3. In a disciplinary action entitled *In the Matter of Statement of Issues Against Jorge*
28 *Antonio Galvez* (Case No. 4099) the Board issued a decision, effective August 22, 2013, in which

1 Respondent's Pharmacy Technician Registration was issued and immediately revoked. However,
2 the revocation was stayed and said registration was placed on probation for a period of three (3)
3 years, with terms and conditions. A copy of that decision is attached as **Exhibit A** and is
4 incorporated by reference.

5 JURISDICTION

6 4. This Petition is brought before the Board under the authority of the following laws.
7 Unless otherwise indicated, all references are to the Business and Professions Code (Code).

8 5. Condition 11 of the Decision and Order *In the Matter of Statement of Issues Against*
9 *Jorge Antonio Galvez* (Case No. 4099) entitled "Violation of Probation," provides:

10 "If a Respondent has not complied with any term or condition of
11 probation, the Board shall have continuing jurisdiction over Respondent, and
12 probation shall automatically be extended, until all terms and conditions have been
13 satisfied or the board has taken other action as deemed appropriate to treat the failure
14 to comply as a violation of probation, to terminate probation, and to impose the
15 penalty that was stayed.

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

24 6. Grounds exist to revoke Respondent's probation under the authority of Condition 12
25 of the Decision and Order *In the Matter of Statement of Issues Against Jorge Antonio Galvez*
26 (Case No. 4099). Respondent did not comply with the terms and conditions of his probation, as
27 more particularly set forth below.

28 FIRST CAUSE TO REVOKE PROBATION

(Failure to Report to the Board)

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

"Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed
by the board or its designee. The report shall be made either in person or in writing,
as directed. Among other requirements, Respondent shall state in each report under
penalty of perjury whether there has been compliance with all the terms and
conditions of probation. Failure to submit timely reports in a form as directed shall

1 be considered a violation of probation. Any period(s) of delinquency in submission
2 of reports as directed may be added to the total period of probation. Moreover, if the
3 final probation report is not made as directed, probation shall be automatically
4 extended until such time as the final report is made and accepted by the board.”

5 8. Respondent’s probation is subject to revocation because he failed to comply with
6 Probation Condition 2, referenced above. Respondent failed to timely submit the following
7 quarterly reports: April 10, 2014, January 10, 2015, and April 10, 2015. Respondent failed to
8 submit the quarterly reports due July 10, 2014, and October 10, 2014.

9 **SECOND CAUSE TO REVOKE PROBATION**

10 **(Failure to Pay Probation Monitoring Costs)**

11 9. At all times after the effective date of Respondent’s probation, Condition 6 stated:

12 **“Probation Monitoring Costs**

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

18 10. Respondent’s probation is subject to revocation because he failed to comply with
19 Probation Condition 6, referenced above. On December 28, 2015, the Board sent Respondent a
20 bill for the probation monitoring costs (\$60.50) for probationary period from December 5, 2014,
21 to December 4, 2015. Respondent has failed to pay the cost billed to him on December 28, 2015.

22 **THIRD CAUSE TO REVOKE PROBATION**

23 **(Failure to Maintain an Active License)**

24 11. At all times after the effective date of Respondent’s probation, Condition 7 stated:

25 **“Status of License**

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

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

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1 12. Respondent's probation is subject to revocation because he failed to comply with
2 Probation Condition 7, referenced above. On July 4, 2014, Respondent was sent a license
3 renewal notice to his address of record with the Board. Respondent failed to renew his license
4 and it expired on September 30, 2015. Said registration was cancelled on January 3, 2016.

5 **FOURTH CAUSE TO REVOKE PROBATION**

6 **(Failure to Comply with the Work Requirement)**

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

8 **"Tolling of Probation**

9 Except during periods of suspension, Respondent shall, at all times while
10 on probation, be employed as a pharmacy technician in California for a minimum of
11 64 hours per calendar month. Any month during which this minimum is not met shall
12 toll the period of probation, i.e., the period of probation shall be extended by one
13 month for each month during which this minimum is not met. During any such
14 period of tolling of probation, Respondent must nonetheless comply with all terms
15 and conditions of probation.

16 Should Respondent, regardless of residency, for any reason (including
17 vacation) cease working as a pharmacy technician for a minimum of 654 hours per
18 calendar month in California, Respondent must notify the board in writing within ten
19 days of cessation of work and must further notify the board in writing within ten days
20 of the resumption of the work. Any failure to provide such notification(s) shall be
21 considered a violation of probation.

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

25 'Cessation of work' means calendar month during which Respondent is
26 not working for at least 64 hours as a pharmacy technician, as defined in Business and
27 Professions Code section 4115. 'Resumption of work' means any calendar month
28 during which Respondent is working as a pharmacy technician for at least 64 hours as
a pharmacy technician, as defined by Business and Professions Code section 4115."

14. Respondent's probation is subject to revocation because he failed to comply with
Probation Condition 10, referenced above. Specifically, Respondent has not worked in the field of
pharmacy since probation commenced on December 5, 2013.

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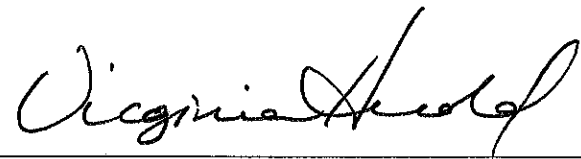
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PRAYER

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. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4099 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician Registration No. TCH 104805 issued to Jorge Antonio Galvez;
2. Revoking or suspending Pharmacy Technician Registration No. TCH 104805, issued to Jorge Antonio Galvez;
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/26/15



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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 5819

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

In the Matter of the Statement of Issues Against:

JORGE ANTONIO GALVEZ,

Respondent.

Case No. 4099

OAH No. 2012100430

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following changes are made to the Decision:

- (1) The word "Bureau" in the first sentence of Paragraph 9 on page 4 is deleted and substituted with the word "Board"; and,
- (2) The Order is hereby revised so that it is clear that the application is granted and a probationary license is being issued, so that the Order reads as follows:

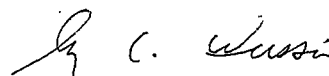
"Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:"

With these clarifications, the Proposed Decision is hereby adopted by the Board of Pharmacy as its Decision in the above-captioned matter.

This decision shall become effective on August 22, 2013.

IT IS SO ORDERED this 23rd day of July, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Statement of Issues Against:

JORGE ANTONIO GALVEZ,

Respondent.

Case No. 4099

OAH No. 2012100430

PROPOSED DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on March 6, 2013, in Los Angeles, California. Complainant was represented by Antonio Lopez, Jr., Deputy Attorney General. Jorge Antonio Galvez (Respondent) appeared and represented himself.

Oral and documentary evidence was received. The record was left open for submission of documents from Respondent. Those documents were received on March 19, 2013, and were admitted into evidence as Respondent's Exhibits A through E. The record was closed and the matter was submitted for decision on April 19, 2013.

FACTUAL FINDINGS

1. On March 19, 2012, Complainant Virginia K. Herold (Complainant) filed the Statement of Issues while acting in her official capacity as Executive Officer of the California State Board of Pharmacy (Board), Department of Consumer Affairs.

2. On June 14, 2010, Respondent submitted an Application for Registration as a Pharmacy Technician (application). On April 28, 2011, the application was denied. Respondent requested a hearing.

3. DeBora White, a licensed Pharmacist and an Inspector with the Board, testified at hearing. She stated that a Pharmacy Technician must be honest and a person of integrity because someone in that position would have access to money, credit cards, prescription drugs with high street value, and confidential information relating to health insurance and medical records.

Cause to Deny Registration

4. On May 13, 2010, in the California Superior Court for the County of Los Angeles, Case Number OHY00043, Respondent was convicted, on his plea of nolo

contendere, of violating Penal Code section 484g, subdivision(a) (fraudulent use of access card), a misdemeanor. Respondent was sentenced to serve 90 days in jail, was placed on summary probation for 36 months, and was ordered to pay fines and restitution.

5. The facts and circumstances underlying the conviction are that on October 27, 2009, Respondent met a woman. Both of them were "a little drunk." Respondent had a medical marijuana card and the woman asked him to purchase some marijuana for her. She handed him a credit card which he used to purchase marijuana from a store called Herbal Remedies, while she waited in the car. The woman then asked Respondent to purchase an X-Box for her son. He went to a Target store and attempted to purchase the X-Box with the same credit card, while the woman again waited in the car. Because Respondent was not able to provide identification matching the name on the credit card, the cashier did not allow Respondent to make the purchase, and he left the store without the X-Box. On November 4, 2009, police arrested Respondent for his use of a stolen credit card on October 27, 2009.

Factors in Mitigation and Rehabilitation

6. Respondent appeared sincere in his demeanor while testifying and he was respectful of the proceedings. He showed remorse for his actions. The event which led to this conviction occurred nearly three-and-a-half years ago, when he had just turned 19 years-old. Respondent did not know the credit card had been stolen and he had not been involved in the theft of the credit card. He has had no previous or subsequent interactions with the law and will complete probation next month.

7. Respondent graduated with honors from American Career College where he was enrolled in the Pharmacy Technician program from January 2010 through September 2010.

8. Respondent has been successfully employed at Yogurtland for almost one year, where he handles money, credit cards, the safe, and inventory.

9. Respondent has become involved with the Christian church. He believes he is "healed and no longer... in need of medicinal cannabis." (Respondent's Exhibit D.)

LEGAL CONCLUSIONS

1. Business and Professions Code¹ sections 480, subdivision (a) and 4301, subdivision (1), provide that a board may deny a license if the applicant has been convicted of a crime, including a conviction following a plea of nolo contendere, which is substantially related to the qualifications, functions, or duties of the profession.

¹ All section references are to the Business and Professions Code, unless otherwise indicated.

2. Title 16, California Code of Regulations, section 1770 provides that a crime is considered to be substantially related to the qualifications, functions or duties of a pharmacy technician if, to a substantial degree, it evidences present or potential unfitness to perform the functions authorized by his registration, in a manner consistent with the public health, safety, or welfare.

3. As DeBora White testified, by reason of their registration and the employment arising out of that registration, pharmacy technicians have access to money, credit cards, prescription drugs with high street value, and confidential information relating to health insurance and medical records. A pharmacy technician must be honest and reliable in dealing with this sensitive information and important responsibilities. Respondent's conviction involved dishonesty, fraud, and deceit and evidences present or potential unfitness to perform the functions authorized by a pharmacy technician registration in a manner consistent with the public health, safety, or welfare, and for that reason the convictions are substantially related to the qualifications, functions and duties of a registrant, pursuant to California Code of Regulations, title 16, section 1770.

4. Cause exists to deny Respondent's application for registration pursuant to sections 480, subdivision (a), and 4301, subdivision (l), in that Respondent has suffered a misdemeanor conviction which is substantially related to the qualifications, functions, and duties of a pharmacy technician, as set forth in Factual Findings 4 and 5 and Legal Conclusions 1 through 3.

5. Section 480, subdivision (a), states that a board may deny a license if the applicant has done any act that would be grounds for revocation or suspension, if done by a licensee. Section 4301, subdivision (f), specifies that this includes acts involving dishonesty, fraud, or deceit.

6. Using a stolen credit card is an act involving dishonesty, fraud, or deceit and would be grounds for revocation or suspension, if done by a licensee, pursuant to sections 480, subdivision (a) and 4301, subdivision (f).

7. Cause exists to deny Respondent's application for registration pursuant to sections 480, subdivision (a) and 4301, subdivision (f), in that Respondent's use of a stolen credit card is an act that would be grounds for revocation or suspension, if done by a licensee, as set forth in Factual Findings 4 and 5 and Legal Conclusions 1 through 6.

Disciplinary Guidelines

8. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public

confidence in licensure. (*Ibid*; see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

9. The Bureau may consider evidence to determine whether the applicant is sufficiently rehabilitated from the wrongful act such that he is fit for registration. Respondent bears the burden of establishing his rehabilitation. (Evid. Code, §§ 115 and 500.) California Code of Regulations, title 16, section 1769 sets forth the Bureau's criteria for evaluating rehabilitation of the applicant and his present eligibility for registration. As set forth in Factual Findings 4 through 9, the nature and severity of the offense was not minor (subd. (1)); Respondent has had no previous or subsequent run-ins with the law (subd. (2)); nearly three-and-a-half years have elapsed since commission of the crime (subd. (3)); Respondent has paid fines and restitution and fully complied with all terms of probation, which will be completed next month² (subd. (4)); and Respondent graduated with honors from American Career College's Pharmacy Technician program, and he has been successfully employed for almost one year, handling money, credit cards, the safe, and inventory. He no longer uses medical marijuana (subd. (5)).

10. Rehabilitation is a qualitative, not quantitative determination and must be evaluated on the basis of two different scales. One is an internal, attitudinal scale and the other is an external, objective scale. In other words, Respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of his misconduct and his remorse for the harm caused. Acceptance of responsibility is a necessary prerequisite to establishing rehabilitation. "Rehabilitation is a state of mind." (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317; see also *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.)

11. Respondent has established his rehabilitation, as established by Factual Findings 6 through 9. He is remorseful and has taken responsibility for his actions. Respondent shows insight into his misconduct, as demonstrated by the fact that since the 2009 incident which led to his conviction, he enrolled in and successfully completed a vocational program, stopped using marijuana, and has held a responsible job for a year. All of this demonstrates personal and professional maturity. Under the applicable criteria set forth in California Code of Regulations, title 16, section 1769, Respondent has established sufficient rehabilitation for issuance of a probationary registration.

² Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a licensee has not committed additional crimes while still on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) However, the other rehabilitation factors set out above do balance against a finding that Respondent's good behavior was solely due to the fact that he was still under the constraints of the criminal justice system.

12. The facts and circumstances of this case warrant the issuance of a probationary pharmacy technician registration, with a three-year period of probation and sufficient terms and conditions to provide consumer protection, while allowing the probationer to demonstrate rehabilitation.

ORDER

Jorge Antonio Galvez's application for issuance of a pharmacy technician registration is denied. However, Respondent shall be issued a pharmacy technician registration, that registration shall be immediately revoked, the revocation shall be stayed, and Respondent's registration shall be placed on probation for a period of three years, subject to the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

2. Report to the Board

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in Pharmacy Board case number 4099 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking any new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in Pharmacy Board case number 4099 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4099 in advance of the Respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 4099 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those

employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

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

6. Probation Monitoring Costs

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

7. Status of License

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

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

8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his pharmacy technician license to the board for surrender. 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, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the board.

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

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

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

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

10. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 64 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 64 hours per calendar month in California, Respondent must notify the board in writing within ten days of cessation of work and must further notify the board in writing within ten days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which Respondent is not working for at least 64 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least 64 hours as a pharmacy technician, as defined by Business and Professions Code section 4115.

11. Violation of Probation

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

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

12. Completion of Probation

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

DATED: April 18, 2013



LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
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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 Statement of Issues
Against:
12 **JORGE ANTONIO GALVEZ**
13 1449 Tamarind Ave., Apt. #3
14 Los Angeles, CA 90028
15 Applicant for Pharmacy Technician
Registration
16 Respondent.

Case No. 4099

STATEMENT OF ISSUES

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about June 14, 2010, the Board of Pharmacy (Board) received an application
23 for a Pharmacy Technician Registration from Jorge Antonio Galvez (Respondent). On or about
24 May 20, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on April 28,
26 2011.

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1 **JURISDICTION**

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 **STATUTORY PROVISIONS**

6 4. Section 480 provides, in pertinent part:

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

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

15 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
16 benefit himself or herself or another, or substantially injure another.

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

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

22

23 "(c) A board may deny a license regulated by this code on the ground that the applicant
24 knowingly made a false statement of fact required to be revealed in the application for the
25 license."

26 5. Section 490 provides, in pertinent part

27 "(a) In addition to any other action that a board is permitted to take against a licensee, a
28 board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code."

13 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
14 subject to discipline, including suspension or revocation.

15 7. Section 4301 provides, in pertinent part:

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

19

20 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
21 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
22 whether the act is a felony or misdemeanor or not.

23

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
4 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
7 of this provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
12 indictment.

13

14 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of or conspiring to violate any provision or term of this chapter or of the applicable
16 federal and state laws and regulations governing pharmacy, including regulations established by
17 the board or by any other state or federal regulatory agency.

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

19 **REGULATORY PROVISIONS**

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

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

27 ///

28 ///

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Crime)**

3 9. Respondent's application is subject to denial under section 480, subdivisions (a)(1),
4 (a)(2), and (a)(3), in that Respondent was convicted of a crime as follows:

5 a. On or about May 13, 2010, after pleading *nolo contendere*, Respondent was
6 convicted of one misdemeanor count of violating Penal Code section 484G, subdivision (a)
7 [fraud], in the criminal proceedings entitled *The People of the State of California v. Jorge Antonio*
8 *Galvez* (Super. Ct. Los Angeles County, 2009, No. OHY00043). The Court sentenced
9 Respondent to serve 90 days in the Los Angeles County Jail, placed him on probation for a period
10 of 36 months, and fined him. The circumstances surrounding the conviction are that on or about
11 October 27, 2009, Respondent with the intent to defraud another person, used for the purpose of
12 obtaining money, goods, services, or anything else of value, an access card or access card account
13 information that was altered, or obtained, knowing that the card or signature was forged, expired,
14 or revoked.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Acts Warranting Denial of Licensure)**

17 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and
18 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed an act which if done by a
19 licentiate of the business and profession in question, would be grounds for suspension or
20 revocation of her license as follows:

21 a. Respondent was convicted of a crime substantially related to the qualifications,
22 functions, or duties of a pharmacy technician which to a substantial degree evidence her present
23 or potential unfitness to perform the functions authorized by her license in a manner consistent
24 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490,
25 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
26 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph
27 (a), inclusive, as though set forth fully.

28

1 b. On or about May 13, 2010, Respondent was convicted of a crime involving acts of
2 moral turpitude, dishonesty, fraud, or deceit in violation of section 4301, subdivision (f).
3 Complainant refers to, and by this reference incorporates, the allegations set forth above in
4 paragraph 9, subparagraph (a), inclusive, as though set forth fully.

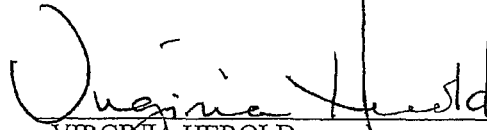
5 **PRAYER**

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

8 1. Denying the application of Jorge Antonio Galvez for registration as a Pharmacy
9 Technician; and

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

11
12 DATED: 3/19/12



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

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16 LA2011601011