

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

In the Matter of the Accusation Against:

Case No. 3476

**TOMAS TOPETE**  
2797 Ulric Street  
San Diego, CA 92111

Original Pharmacy Technician Registration  
No. TCH 5914

Respondent.

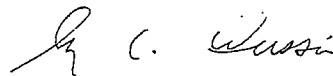
**DECISION AND ORDER**

The attached Stipulated Surrender of License 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 October 19, 2010.

It is so ORDERED on November 18, 2010:

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 ERIN M. SUNSERI  
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*Attorneys for Complainant*

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**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Accusation Against:

Case No. 3476

12 **TOMAS TOPETE**  
13 **2797 Ulric Street**  
14 **San Diego, CA 92111**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 **Pharmacy Technician Registration**  
16 **No. TCH 5914**

17 Respondent.

18  
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
20 proceeding that the following matters are true:

21 **PARTIES**

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
23 She brought this action solely in her official capacity and is represented in this matter by Edmund  
24 G. Brown Jr., Attorney General of the State of California, and by Erin M. Sunseri, Deputy  
25 Attorney General.

26 2. Tomas Topete (Respondent) is representing himself in this proceeding and has chosen  
27 not to exercise his right to be represented by counsel.

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1           14. The surrender of Respondent's Pharmacy Technician Registration and the acceptance  
2 of the surrendered license by the Board shall constitute the imposition of discipline against  
3 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
4 Respondent's license history with the Board.

5           15. Respondent shall lose all rights and privileges as a licensed pharmacy technician in  
6 California as of the effective date of the Board's Decision and Order.

7           16. Respondent shall cause to be delivered to the Board both his wall license certificate  
8 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

9           17. If he ever applies for licensure or petitions for reinstatement in the State of California,  
10 the Board shall treat it as a new application for licensure. Respondent must comply with all the  
11 laws, regulations and procedures for licensure in effect at the time the application or petition is  
12 filed, and all of the charges and allegations contained in Accusation No. 3476 shall be deemed to  
13 be true, correct and admitted by Respondent when the Board determines whether to grant or deny  
14 the application or petition.

15           18. If Respondent should ever apply or reapply for a new license or certification, or  
16 petition for reinstatement of a license, by any other health care licensing agency in the State of  
17 California, all of the charges and allegations contained in Accusation, No. 3476 shall be deemed  
18 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any  
19 other proceeding seeking to deny or restrict licensure.

20           19. Respondent shall not apply for any license, permit, or registration from the Board for  
21 three (3) years from the effective date of this decision. Respondent stipulates that should he apply  
22 for any license from the Board on or after the effective date of this decision, all allegations set  
23 forth in Accusation No. 3476 shall be deemed to be true, correct and admitted by Respondent  
24 when the Board determines whether to grant or deny the application. Respondent shall satisfy all  
25 requirements applicable to that license as of the date the application is submitted to the board,  
26 including, but not limited to certification by a nationally recognized body prior to the issuance of  
27 a new license. Respondent is required to report this surrender as disciplinary action.

28   ///



**Exhibit A**

**Accusation No. 3476**

1 EDMUND G. BROWN JR.  
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2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 ERIN M. SUNSERI  
Deputy Attorney General  
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13 **2797 Ulric Street**  
14 **San Diego, CA 92111**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration No.**  
16 **TCH 5914**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about March 19, 1993, the Board of Pharmacy issued Pharmacy Technician  
24 Registration No. TCH 5914 to Tomas Topete (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on July 31, 2010, unless renewed.

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JURISDICTION

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

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct.

STATUTORY PROVISIONS

6. Section 4301 of the Code states:

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

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

....

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

....

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

7. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

....

(2) Conviction of a crime.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

1 (b) Notwithstanding any other provisions of this code, the provisions of this division shall  
2 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)  
3 of subdivision (a).

4 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good  
5 moral character or any similar ground relating to an applicant's character, reputation, personality,  
6 or habits.

7 8. Section 482 of the Code states:

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

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

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

12 Each board shall take into account all competent evidence of rehabilitation furnished by the  
13 applicant or licensee."

14 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
15 revoke a license on the ground that the licensee has been convicted of a crime substantially  
16 related to the qualifications, functions, or duties of the business or profession for which the  
17 license was issued.

18 10. Section 493 of the Code states:

19 Notwithstanding any other provision of law, in a proceeding conducted by a board within  
20 the department pursuant to law to deny an application for a license or to suspend or revoke a  
21 license or otherwise take disciplinary action against a person who holds a license, upon the  
22 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
23 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
24 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
25 and the board may inquire into the circumstances surrounding the commission of the crime in  
26 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
27 qualifications, functions, and duties of the licensee in question.

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1 "As used in this section, "license" includes "certificate," "permit," "authority," and  
2 "registration."

3 11. Section 4313 of the Code states:

4 In determining whether to grant an application for licensure or whether to discipline or  
5 reinstate a license, the board shall give consideration to evidence of rehabilitation. However,  
6 public protection shall take priority over rehabilitation and, where evidence of rehabilitation and  
7 public protection are in conflict, public protection shall take precedence.

8 REGULATIONS

9 12. California Code of Regulations, title 16, section 1769(b) states:

10 When considering the suspension or revocation of a facility or personal license on the  
11 ground that the licensee or the registrant has been convicted of a crime, the board in evaluating  
12 the rehabilitation of such person and her present eligibility for a license will consider the  
13 following:

14 (1) The nature and severity of the act(s) or offense(s).

15 (2) Total criminal record.

16 (3) Time that has elapsed since the commission of the act(s) or offense(s).

17 (4) Whether the licensee has complied with all terms of parole, probation, restitution, or  
18 any other sanctions lawfully imposed against the licensee.

19 (5) Evidence, if any, of rehabilitation submitted by the licensee.

20 13. 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.

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1 COST RECOVERY

2 14. Section 125.3 of the Code provides, in pertinent part, that the  
3 Board/Registrar/Director may request the administrative law judge to direct a licentiate found to  
4 have committed a violation or violations of the licensing act to pay a sum not to exceed the  
5 reasonable costs of the investigation and enforcement of the case.

6 FACTS

7 15. On or about November 22, 2005, in a criminal proceeding entitled *People v. Tomas*  
8 *Topete*, in the Superior Court of California, County of San Diego, Case No. CD 194852,  
9 Respondent was convicted by his plea of guilty to violation of Penal Code section 422 (making a  
10 criminal threat with intent to terrorize), a felony.

11 16. Respondent was sentenced to three years formal probation, commitment to the  
12 custody of the Sheriff for 365 days, payment of fines and fees in the amount of \$839.00, payment  
13 of all medical/psychological therapy expenses incurred by the victim, payment of restitution to  
14 the victim in an amount to be determined, attend and successfully complete a substance abuse  
15 counseling program, totally abstain from the use of alcohol, not own or possess a weapon or  
16 firearm, not use or possess any controlled substance without a valid prescription and submit to  
17 testing for the use of controlled substances/alcohol when required by the probation or law  
18 enforcement officer, attend and successfully complete anger management and individual  
19 counseling, comply with all orders of the family court ( including restraining orders), no contact  
20 with victim, successfully complete a batterer's program at least one year in duration involving  
21 weekly, minimum two-hour sessions, comply with protective order, obey all court orders.

22 17. As a result of this plea arrangement, all other charges (violation of Penal Code section  
23 245(a) (1)-assault with a deadly weapon/force likely to cause great bodily injury; violation of  
24 Penal Code section 273.6(a) - disobeying a court obtained to prevent domestic violence and  
25 disturbance of the peace; and violation of Vehicle Code section 20002(a) - hit and run) were  
26 dismissed.

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1 18. The circumstances of the crime are that on or about October 30, 2005, Respondent  
2 chased the victim in his vehicle, ramming her vehicle with his multiple times while travelling at  
3 high speeds through city streets and neighborhoods. Respondent attempted to force the victim off  
4 the road with his vehicle, and tried to force the victim into the cars parked alongside the road.  
5 When the victim stopped her vehicle near her boyfriend's house, Respondent rammed it again.  
6 The victim yelled for her sister to call the police, to which Respondent replied "You're going to  
7 call the cops? I might as well fuck you up then." The victim's boyfriend arrived on the scene,  
8 distracting Respondent and providing the victim with an opportunity to escape in her vehicle.

9 19. The victim and Respondent had ended a fifteen year cohabiting relationship in  
10 September 2004. They have two children from this relationship.

11 20. The victim reported that she was afraid of the Respondent. She stated that he  
12 continually disregarded the restraining order. (The police report states this was evident by the  
13 active misdemeanor warrant for his arrest). The victim stated that although she did not report it,  
14 Respondent has attempted to run her off the road in the past, and had hit her numerous times.

15 21. During the investigation of this matter, the San Diego police discovered that  
16 Respondent had an active warrant for violation of Penal Code section 166(c)(1); willful violation  
17 of a protective order issued in a pending criminal proceeding involving domestic violence, or  
18 issued as a condition of probation after a conviction in a criminal proceeding involving domestic  
19 violence. Respondent was arrested for the warrant, for violation of Domestic Violence probation  
20 (San Diego prosecutor's case number M864670DV).

21 22. As a result of this matter, probation as to San Diego Superior Court Case No.  
22 M864670DV was revoked, and Respondent was remanded into custody.

23 **FIRST CAUSE FOR DISCIPLINE**

24 (November 22, 2005 Criminal Conviction for making Criminal Threats on October 30, 2005)

25 23. Respondent is subject to disciplinary action under Code sections 490 and 4301(1), in  
26 that he was convicted of a crime substantially related to the duties, functions, and qualifications of  
27 a pharmacy technician, as described in paragraphs 15-22, above.

28 ///



PRAYER

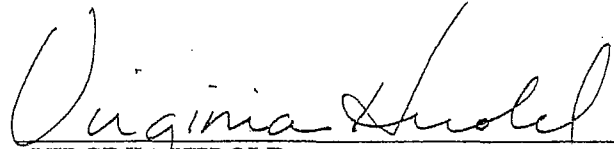
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 5914, issued to Respondent Tomas Topete.

2. Ordering Respondent Tomas Topete to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/16/10



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

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