

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

In the Matter of Statement of Issues Against:

LIZETTE RENDON
P.O. Box 444
Sultana, CA 97618

Applicant

Respondent.

Case No. 3535

OAH No. 2010050648

DECISION

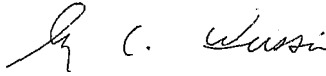
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on March 9, 2011.

It is so ORDERED February 7, 2011.

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
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In the Matter of the Statement of Issues
Against:

LIZETTE RENDON

Sultana, California 97618

Respondent.

Case No. 3535

OAH No. 2010050648

PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 17, 2010, in Fresno, California.

Patrick M. Kenady, Deputy Attorney General, represented Virginia K. Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

David Hogue, Attorney at Law,¹ represented Lizette Rendon (respondent) who was present.

Immediately prior to hearing, complainant and respondent entered into an agreement to settle this matter. Jurisdiction was found proper. No additional evidence was submitted.

FACTUAL FINDINGS

1. Complainant made and filed the Statement of Issues in her official capacity.
2. On or about April 18, 2008, the Board received an application from respondent for registration as a pharmacy technician. Respondent signed her application on April 17, 2008. She disclosed in the appropriate place that she had been convicted of a criminal offense. On August 31, 2009, the Board denied respondent's application on the basis of her criminal conviction pursuant to Business and Professions Code section 480, subdivisions

¹ David Hogue, Attorney at Law, H & K Inc., 499 North L Street, Dinuba, California 93618.

(a)(1) and (3). Respondent timely appealed the Board's decision and requested an administrative hearing in the matter.

3. It was alleged that on October 5, 2005, respondent was convicted in the Superior Court of California, County of Tulare, in Case No. DCM 134082, on her plea of guilty to violating Penal Code section 594, subdivision (a)(1) (vandalism/graffiti), a misdemeanor. Her conduct involved defacing or damaging personal property, to wit, an automobile, belonging to B.A.²

Stipulated Settlement

4. The parties entered into a stipulated settlement before hearing. Respondent entered into this stipulated settlement without prejudice. If the Board refuses to accept the stipulated settlement agreed to by the parties, respondent reserves her right to an administrative hearing on the merits. The terms of the agreement are as follows: A pharmacy technician license is to be granted to respondent but stayed for three (3) years. The parties agreed to Standard and Optional terms of probation as set forth below. (California Code of Regulations, title 16, section 1760 [Model Terms with Guidelines].)

5. Standard Conditions:

1. Certification Prior to Resuming Work
2. Obey All Laws
3. Report to the Board
4. Interview with the Board
5. Cooperate with Board Staff
6. Notice to Employers
7. [Omitted - Reimbursement of Board Costs]
8. Probation Monitoring Costs
9. Status of License
10. License Surrender While on Probation/Suspension
11. Notification of a Change in Name, Residence Address, Mailing Address or Employment
12. Tolling of Probation
13. Violation of Probation
14. Completion of Probation

² Penal Code section 594, subdivision (a) states: "Every person who maliciously commits any of the following acts with respect to any real personal property not his own ... is guilty of vandalism: (1) Defaces with graffiti or other inscribed material. [¶]...[¶]"

6. Optional Conditions:

15. No Ownership of Licensed Premises
16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups - Only upon one confirmed positive drug screen within thirty (30) days of the effective date of this decision
17. Random Drug Screening
18. Work Site Monitor
20. Abstain from Drugs and Alcohol Use
21. [Omitted - Tolling of Suspension]
22. [Omitted - Restitution]
23. Prescription Coordination and Monitoring of Prescription Use

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 480, subdivision (a) provides that the Board may deny a license if the applicant has: “(1) Been convicted of a crime ... [or] (3) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. ...” The crime must be substantially related to the qualifications, functions or duties of the business or profession for which the application is made.

2. Business and Professions Code section 4300, subdivision (c), states that the board may refuse a license to any applicant found to be guilty of unprofessional conduct. The board may issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and has met all other requirements for licensure.

3. Business and Professions Code section 4301 defines unprofessional conduct to include: “[¶]...[¶] (f) 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. ... [and] (1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter...”

4. Pursuant to California Code of Regulations, title 16, section 1770, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public, health, safety, or welfare.

Cause for Denial

5. The crime of vandalism is substantially related to the qualifications, functions or duties of a licensee. Respondent must be trusted to respect the private property and data of businesses and persons.

6. Cause for denial of respondent's application for a pharmacy technician license exists pursuant to Business and Professions Code sections 480, 4300, subdivision (c), and 4301, subdivisions (f) and (1), in conjunction with California Code of Regulations, title 16, section 1770, by reason of Factual Finding 3, and Legal Conclusion 5.

ORDER

The application of Lizette Rendon for issuance of a Pharmacy Technician Registration Number is GRANTED.

It is understood by respondent that, in deciding whether to adopt this stipulation, the board may receive oral and written communication from its staff and the Office of the Attorney General. Communications pursuant to this paragraph shall not disqualify the board or other persons from future participation in this or any other matter affecting respondent. In the event this settlement is not adopted by the board, the stipulation will not become effective and may not be used for any purpose, except this paragraph, which shall remain in effect.

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:

1. Certification Prior to Resuming Work

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

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

and devices or controlled substances. Respondent shall not resume work until notified by the board.

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

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

2. 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's 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.

3. 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.

4. 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.

5. 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.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3535 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her 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 case number 3535 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her 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 or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3535 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 thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 3535 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her 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.

7. [Reimbursement of Board Costs – Omitted]

8. 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.

9. 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.

10. 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 or her 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 or her pharmacy technician license to the board within ten (10) 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 (3) 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.

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

Respondent shall notify the board in writing within ten (10) 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 (10) 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.

12. 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 20 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 20 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) 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 thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 20 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 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. 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.

14. Completion of Probation

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

OPTIONAL CONDITIONS OF PROBATION

15. No Ownership of Licensed Premises

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

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective of this decision. Violation of this restriction shall be considered a violation of probation.

16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Upon one confirmed positive drug screen within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and

dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

17. Random Drug Screening

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

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

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

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

18. Work Site Monitor

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site

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

19. [Notification of Departure – Omitted]

20. Abstain from Drugs and Alcohol Use

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

21. [Tolling of Suspension – Omitted]

22. [Restitution – Omitted]

23. Prescription Coordination and Monitoring of Prescription Use

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history [with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental illness, and/or of gambling addiction] and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's [accusation or petition to revoke probation] and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician

assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

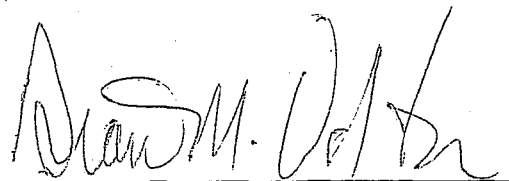
During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

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

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

DATED: December 17, 2010



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
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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 **LIZETTE RENDON**
13 **P.O. Box 444**
14 **Sultana, CA 97618**
15
16 Respondent.

Case No. 3535

STATEMENT OF ISSUES

17
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 April 18, 2008, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for registration as a pharmacy technician from Lizette Rendon
24 (Respondent). On or about April 17, 2008, Lizette Rendon certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on August 31, 2009.

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28 ///

JURISDICTION

This Statement of Issues 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.

3. Section 4300 subd. (c) provides:

“(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.”

4. Section 4301 provides that the Board shall take action against a license holder of a licensee who is guilty of unprofessional conduct which includes in pertinent part the following:

“(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...”

5. Section 480 states in pertinent part: “(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

///

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

7 ...

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

10 The board may deny a license pursuant to this subdivision only if the crime or act is substantially
11 related to the qualifications, functions, or duties of the business or profession for which
12 application was made.

13 (b) Notwithstanding any other provision of this code, no person shall be denied a license solely on
14 the basis that he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
15 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted
16 of a misdemeanor if he or she has met all the applicable requirements of criteria of rehabilitation
17 developed by the board to evaluate the rehabilitation of a person when considering the denial of a
18 license under section 482.

19 ...

20 FIRST CAUSE FOR DENIAL OF APPLICATION

21 (CRIMINAL CONVICTION)

22 6. Respondent's application is subject to denial under section 4300(c) in conjunction
23 with section 4301(f) and (i) and 480 in that on or about October 5, 2005, in a criminal proceeding
24 entitled People v. Lizette Rendon in Tulare County Superior Court, Case Number DCM 134082,
25 Respondent was convicted by plea of guilty to Penal Code section 594(A)(1), a misdemeanor.

26 The circumstances are as follows:

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a. On or about September 1, 2004, Respondent did unlawfully and maliciously deface with graffiti and other inscribed materials and otherwise damage or destroy real and personal property, to wit, 1998 CHEVY SILVERADO, belonging to Benjamin Alvarado.

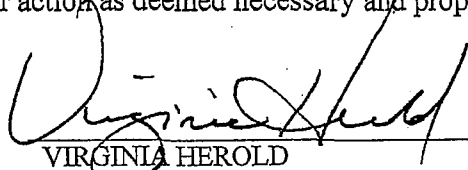
b. On or about October 5, 2005, Respondent was sentenced as follows: 3 years probation and 70 days county jail.

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 Lizette Rendon for a pharmacy technician registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/15/10



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

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