

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

In the Matter of the Accusation Against:

Case No. 3712

JULIE MARIE MENDOZA
375 Ezie Street
San Jose, CA 95111

Pharmacy Technician License No. TCH 24030
Respondent.

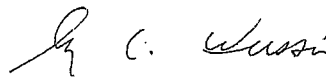
DECISION AND ORDER

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

This decision shall become effective on March 28, 2011.

It is so ORDERED on February 25, 2011.

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 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3712

11 **JULIE MARIE MENDOZA**
12 375 Ezie Street
San Jose, CA 95111
13 **Pharmacy Technician License No. TCH**
24030

OAH No. 2010080797

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 Respondent.
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16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Edmund
22 G. Brown Jr., Attorney General of the State of California, by Justin R. Surber, Deputy Attorney
23 General.

24 2. Respondent Julie Marie Mendoza (Respondent) is representing herself in this
25 proceeding and has chosen not to exercise her right to be represented by counsel.

26 3. On or about October 22, 1997, the Board of Pharmacy issued Pharmacy Technician
27 License No. TCH 24030 to Julie Marie Mendoza (Respondent). The Pharmacy Technician
28

1 License was in full force and effect at all times relevant to the charges brought in Accusation No.
2 3712 and will expire on April 30, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3712 was filed before the Board of Pharmacy (Board), Department
5 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on July 8, 2010. Respondent
7 timely filed her Notice of Defense contesting the Accusation. A First Amended Accusation was
8 filed on September 13, 2010 and properly served upon Respondent. A copy of First Amended
9 Accusation No. 3712 is attached as exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 3712. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

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

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 3712.

26 9. Respondent agrees that her Pharmacy Technician License is subject to discipline and
27 she agrees to be bound by the Board of Pharmacy (Board)'s probationary terms as set forth in the
28 Disciplinary Order below.

CONTINGENCY

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

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 24030 issued to Respondent Julie Marie Mendoza (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until

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

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

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

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

18 **2. Obey All Laws**

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

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

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

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

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

5 **3. Report to the Board**

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

14 **4. Interview with the Board**

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

20 **5. Cooperate with Board Staff**

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

24 **6. Notice to Employers**

25 During the period of probation, respondent shall notify all present and prospective
26 employers of the decision in case number 3712 and the terms, conditions and restrictions imposed
27 on respondent by the decision, as follows:

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

1 respondent undertaking any new employment, respondent shall cause her direct supervisor,
2 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
3 tenure of employment) and owner to report to the board in writing acknowledging that the listed
4 individual(s) has/have read the decision in case number 3712 and the terms and conditions
5 imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or
6 supervisor(s) submit timely acknowledgement(s) to the board.

7 If respondent works for or is employed by or through a pharmacy employment service,
8 respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy
9 of the terms and conditions of the decision in case number 3712 in advance of the respondent
10 commencing work at each pharmacy. A record of this notification must be provided to the board
11 upon request.

12 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
13 (15) days of respondent undertaking any new employment by or through a pharmacy employment
14 service, respondent shall cause her direct supervisor with the pharmacy employment service to
15 report to the board in writing acknowledging that she has read the decision in case number 3712
16 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
17 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

26 7. Reimbursement of Board Costs

27 As a condition precedent to successful completion of probation, respondent shall pay to the
28 board its costs of investigation and prosecution in the amount of \$3,245.00. Respondent shall

1 make said payments pursuant to a payment plan approved by the board or its designee. There
2 shall be no deviation from this schedule absent prior written approval by the board or its designee.
3 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

4 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to
5 reimburse the board its costs of investigation and prosecution.

6 **8. Probation Monitoring Costs**

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

11 **9. Status of License**

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

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

19 **10. License Surrender While on Probation/Suspension**

20 Following the effective date of this decision, should respondent cease work due to
21 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
22 respondent may tender her pharmacy technician license to the board for surrender. The board or
23 its designee shall have the discretion whether to grant the request for surrender or take any other
24 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
25 license, respondent will no longer be subject to the terms and conditions of probation. This
26 surrender constitutes a record of discipline and shall become a part of the respondent's license
27 history with the board.

28 Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician

1 license to the board within ten (10) days of notification by the board that the surrender is
2 accepted. Respondent may not reapply for any license, permit, or registration from the board for
3 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
4 applicable to the license sought as of the date the application for that license is submitted to the
5 board.

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

8 Respondent shall notify the board in writing within ten (10) days of any change of
9 employment. Said notification shall include the reasons for leaving, the address of the new
10 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
11 shall further notify the board in writing within ten (10) days of a change in name, residence
12 address and mailing address, or phone number.

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

15 **12. Tolling of Probation**

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

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

27 It is a violation of probation for respondent's probation to remain tolled pursuant to the
28 provisions of this condition for a total period, counting consecutive and non-consecutive months,

1 exceeding thirty-six (36) months.

2 "Cessation of work" means calendar month during which respondent is not
3 working for at least 20 hours as a pharmacy technician, as defined in Business and
4 Professions Code section 4115. "Resumption of work" means any calendar month
5 during which respondent is working as a pharmacy technician for at least 20 hours as
6 a pharmacy technician as defined by Business and Professions Code section 4115.

7 **13. Violation of Probation**

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

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

20 **14. Completion of Probation**

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

23 **15. No Ownership of Licensed Premises**

24 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
25 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
26 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
27 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
28 days following the effective date of this decision and shall immediately thereafter provide written

1 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
2 documentation thereof shall be considered a violation of probation.

3 **16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

4 Upon one positive drug screen, respondent shall begin regular attendance at a recognized
5 and established substance abuse recovery support group in California, (e.g., Alcoholics
6 Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee.
7 Respondent must attend at least one group meeting per week unless otherwise directed by the
8 board or its designee. Respondent shall continue regular attendance and submit signed and dated
9 documentation confirming attendance with each quarterly report for the duration of probation.
10 Failure to attend or submit documentation thereof shall be considered a violation of probation.

11 **17. Random Drug Screening**

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

28 During suspension, respondent shall not enter any pharmacy area or any portion of or any

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

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

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

13 18. **Work Site Monitor**

14 Within ten (10) days of the effective date of this decision, respondent shall identify a work
15 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
16 during working hours. Respondent shall be responsible for ensuring that the work site monitor
17 reports in writing to the board quarterly. Should the designated work site monitor determine at
18 any time during the probationary period that respondent has not maintained sobriety, she shall
19 notify the board immediately, either orally or in writing as directed. Should respondent change
20 employment, a new work site monitor must be designated, for prior approval by the board, within
21 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
22 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
23 considered a violation of probation.

24 19. **Abstain from Drugs and Alcohol Use**

25 Respondent shall completely abstain from the possession or use of alcohol, controlled
26 substances, dangerous drugs and their associated paraphernalia except when the drugs are
27 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
28 request of the board or its designee, respondent shall provide documentation from the licensed

1 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
2 treatment of the respondent. Failure to timely provide such documentation shall be considered a
3 violation of probation. Respondent shall ensure that she is not in the same physical location as
4 individuals who are using illicit substances even if respondent is not personally ingesting the
5 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
6 not supported by the documentation timely provided, and/or any physical proximity to persons
7 using illicit substances, shall be considered a violation of probation.

8 **20. Prescription Coordination and Monitoring of Prescription Use**

9 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
10 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
11 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
12 history [with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental
13 illness, and/or of gambling addiction] and who will coordinate and monitor any prescriptions for
14 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
15 practitioner shall be provided with a copy of the board's accusation and decision. A record of this
16 notification must be provided to the board upon request. Respondent shall sign a release
17 authorizing the practitioner to communicate with the board about respondent's treatment(s). The
18 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the
19 board on a quarterly basis for the duration of probation regarding respondent's compliance with
20 this condition. If any substances considered addictive have been prescribed, the report shall
21 identify a program for the time limited use of any such substances. The board may require that the
22 single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist
23 in addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any
24 reason, cease supervision by the approved practitioner, respondent shall notify the board
25 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
26 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the
27 board or its designee for its prior approval. Failure to timely submit the selected practitioner or
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1 replacement practitioner to the board for approval, or to ensure the required reporting thereby on
2 the quarterly reports, shall be considered a violation of probation.

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

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

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

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

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

24 ACCEPTANCE

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

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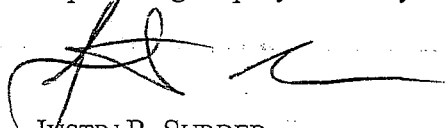
JULIE MARIE MENDOZA
Respondent

ENDORSEMENT

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

Dated: 12/7/10

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

SF2010201096
Stipulation.rtf

Exhibit A

Accusation No. 3712

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2 FRANK H. PACOE
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Attorneys for Complainant

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 **JULIE MARIE MENDOZA**
12 375 Ezie Street
San Jose, CA 95111
13 **Pharmacy Technician License No. TCH**
24030

FIRST AMENDED ACCUSATION

14
15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 22, 1997, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 24030 to Julie Marie Mendoza (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on April 30, 2011, unless renewed.

25 **JURISDICTION**

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

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4. Section 4300 of the Code states:

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

5. 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:

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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

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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.

4"

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

9 7. California Code of Regulations, title 16, section 1770, states:

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

16 8. Section 4022 of the Code states

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
18 humans or animals, and includes the following:

19 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
20 prescription," "Rx only," or words of similar import.

21 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
22 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
23 in with the designation of the practitioner licensed to use or order use of the device.

24 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
25 prescription or furnished pursuant to Section 4006."

26 9. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a person upon
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
9 labeled with the name and address of the supplier or producer.

10 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
11 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
12 devices."

13 10. Health and Safety Code section 11550(a) states:

14 "No person shall use, or be under the influence of any controlled substance which is (1)
15 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
16 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
17 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
18 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
19 Schedule III, IV, or V, except when administered by or under the direction of a person licensed
20 by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of
21 the defense to show that it comes within the exception. Any person convicted of violating this
22 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90
23 days or more than one year in a county jail. The court may place a person convicted under this
24 subdivision on probation for a period not to exceed five years and, except as provided in
25 subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that
26 the person be confined in a county jail for at least 90 days. Other than as provided by subdivision
27 (c), in no event shall the court have the power to absolve a person who violates this subdivision
28 from the obligation of spending at least 90 days in confinement in a county jail."

1 11. Health and Safety Code section 11377(a) states:

2 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
3 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
4 Business and Professions Code, every person who possesses any controlled substance which is
5 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
6 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
7 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
8 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
9 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
10 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
11 than one year or in the state prison."

12 COSTS

13 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 DRUGS INVOLVED

18 13. Methamphetamine is a Schedule II controlled substance pursuant to Health and
19 Safety Code section 11055(d)(2) and a dangerous drug pursuant to section 4022 if the Code.

20 FIRST CAUSE FOR DISCIPLINE

21 (Violation of Drug Laws)

22 14. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
23 Respondent violated Health and Safety sections 11377 and 11550 and Business and Professions
24 Code section 4060; all three are California statutes regulating controlled substances and
25 dangerous drugs. On or about May 27, 2007, San Jose police found Respondent under the
26 influence and in possession of methamphetamine.

27 ///

28 ///

1 SECOND CAUSE FOR DISCIPLINE

2 (Dangerous Use of Drugs)

3 15. Respondent is subject to disciplinary action under section 4301(h) of the code in that
4 Respondent used methamphetamine on or about May 27, 2007.

5 THIRD CAUSE FOR DISCIPLINE

6 (Conviction)

7 16. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the
8 code in that Respondent was convicted of a crime that is substantially related to the duties,
9 functions, or qualifications of a pharmacy technician. On or about September 25, 2007, in Santa
10 Clara County Superior Court Case No. CC770593, Respondent plead no contest to and was
11 subsequently convicted of fighting in public in violation of Penal Code section 415(1). The
12 circumstances leading to Respondent's conviction are as follows:

13 17. On or about June 1, 2007, Respondent fought with the father of her child over the
14 custody of that child. Respondent hit and scratched the father in the face. Respondent was
15 arrested by San Jose Police and was charged with battery on a spouse/cohabitant in violation of
16 Penal Code sections 242-243(e).

17 DISCIPLINE CONSIDERATIONS

18 18. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about February 26, 2004, in a prior action, the Board of Pharmacy
20 issued Citation Number CL 2002 25501-c and ordered Respondent to pay \$500. Respondent
21 worked as a pharmacy technician with an expired license in violation of section 4115(e)(1) of the
22 code. That Citation is now final and is incorporated by reference as if fully set forth herein.

23 PRAYER

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

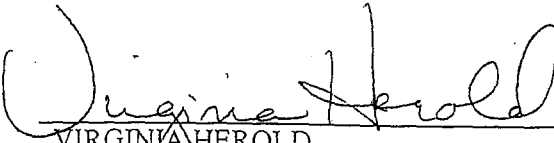
26 1. Revoking or suspending Pharmacy Technician License Number TCH 24030, issued
27 to Julie Marie Mendoza:

28 2. Ordering Julie Marie Mendoza to pay the Board of Pharmacy the reasonable costs of

1 the investigation and enforcement of this case; pursuant to Business and Professions Code section
2 125.3;

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

5 DATED: 9/13/10

4
6 

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

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