

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

In the Matter of the First Amended Accusation  
Against:

**GABRIELA GALLEGOS  
3840 Walnut  
Lynwood, CA 90262**

**Pharmacy Technician License No.  
TCH 36152**

Respondent.

Case No. 4068

OAH No. L-2011090183

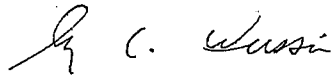
**DECISION AND ORDER**

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 May 25, 2012.

It is so ORDERED on April 25, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 SUSAN MELTON WILSON  
Deputy Attorney General  
4 State Bar No. 106902  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-4942  
6 Facsimile: (213) 897-2804  
E-mail: Susan.Wilson@doj.ca.gov  
7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation  
12 Against:

13 **GABRIELA GALLEGOS**  
14 3840 Walnut  
Lynwood, CA 90262

15 Pharmacy Technician Registration  
16 No. TCH 36152

Respondent.

Case No. 3928  
OAH No. L-2011090183

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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

19 **PARTIES**

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

24 2. Respondent Gabriela Gallegos (Respondent) is represented in this proceeding by  
25 attorney Nicholas Jurkowitz of the Fenton Nelson Law Office , at 11835 West Olympic  
26 Boulevard, Suite 925, Los Angeles, CA 90064

27 3. On or about June 8, 2001, the Board of Pharmacy issued Pharmacy Technician  
28 Registration No. TCH 36152 to Gabriela Gallegos (Respondent). The Pharmacy Technician

1 Registration was in full force and effect at all times relevant to the charges brought in Accusation  
2 No. 3928 and will expire on July 31, 2012, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 3928 was filed before the Board of Pharmacy (Board) , Department  
5 of Consumer Affairs on July 6, 2011, and was duly served with all statutorily required documents  
6 on Respondent, who then filed her timely Notice of Defense contesting the Accusation. First  
7 Amended Accusation No. 3928 was filed before the Board of Pharmacy (Board) on February 13,  
8 2012, was duly served, and is currently pending before the Board of Pharmacy.

9 5. A copy of First Amended Accusation No. 3928 is attached as **Exhibit A** and  
10 incorporated herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 6. Respondent has carefully read, fully discussed with counsel, and understands the  
13 charges and allegations in First Amended Accusation No. 3928. Respondent has also carefully  
14 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
15 Disciplinary Order.

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

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24 every right set forth above.

25 **CULPABILITY**

26 9. Respondent understands and agrees that the charges and allegations in Accusation  
27 No. 3928, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacy  
28 Technician Registration. For the purpose of resolving the Accusation without the expense and

1 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
2 establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up  
3 her right to contest those charges.

4 10. Respondent agrees that her Pharmacy Technician Registration is subject to discipline  
5 and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary  
6 Order below.

### 7 CONTINGENCY

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

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

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

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

**DISCIPLINARY ORDER**

1  
2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 36152 issued  
3 to Respondent Gabriela Gallegos (Respondent) is revoked. However, the revocation is stayed and  
4 Respondent is placed on probation for four (4) years on the following terms and conditions.

5 **1. Certification Prior to Resuming Work**

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

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

20 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
21 licensed premises by the board in which 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 **2. Obey All Laws**

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

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

- 28  an arrest or issuance of a criminal complaint for violation of any provision of the

1 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
2 substances laws

- 3  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
4 criminal complaint, information or indictment
- 5  a conviction of any crime
- 6  discipline, citation, or other administrative action filed by any state or federal agency  
7 which involves respondent's pharmacy technician registration or which is related to  
8 the practice of pharmacy or the manufacturing, obtaining, handling, distributing,  
9 billing, or charging for any drug, device or controlled substance.

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

11 **3. Report to the Board**

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

20 **4. Interview with the Board**

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

26 **5. Cooperate with Board Staff**

27 Respondent shall cooperate with the board's inspection program and with the board's  
28 monitoring and investigation of respondent's compliance with the terms and conditions of her

1 probation. Failure to cooperate shall be considered a violation of probation.

2 **6. Notice to Employers**

3 During the period of probation, respondent shall notify all present and prospective  
4 employers of the decision in case number 3928 and the terms, conditions and restrictions imposed  
5 on respondent by the decision, as follows:

6 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
7 respondent undertaking any new employment, respondent shall cause her direct supervisor,  
8 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
9 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
10 individual(s) has/have read the decision in case number 3928 and the terms and conditions  
11 imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or  
12 supervisor(s) submit timely acknowledgement(s) to the board.

13 If respondent works for or is employed by or through a pharmacy employment service,  
14 respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy  
15 of the terms and conditions of the decision in case number 3928 in advance of the respondent  
16 commencing work at each pharmacy. A record of this notification must be provided to the board  
17 upon request.

18 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
19 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
20 service, respondent shall cause her direct supervisor with the pharmacy employment service to  
21 report to the board in writing acknowledging that she has read the decision in case number 3928  
22 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
23 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

27 "Employment" within the meaning of this provision shall include any full-time,  
28 part-time, temporary or relief service or pharmacy management service as a pharmacy

1 technician or in any position for which a pharmacy technician license is a requirement  
2 or criterion for employment, whether the respondent is considered an employee,  
3 independent contractor or volunteer.

4 **7. Reimbursement of Board Costs**

5 As a condition precedent to successful completion of probation, respondent shall pay to the  
6 board its costs of investigation and prosecution in the amount of \$ 1,500.00 (One Thousand and  
7 Five Hundred Dollars). Respondent shall make said payments as approved by the Board. There  
8 shall be no deviation from this schedule absent prior written approval by the board or its designee.  
9 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

12 **8. Probation Monitoring Costs**

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

17 **9. Status of License**

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

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

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

26 Following the effective date of this decision, should respondent cease work due to  
27 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
28 respondent may tender her pharmacy technician license to the board for surrender. The board or



1 its designee shall have the discretion whether to grant the request for surrender or take any other  
2 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the  
3 license, respondent will no longer be subject to the terms and conditions of probation. This  
4 surrender constitutes a record of discipline and shall become a part of the respondent's license  
5 history with the board.

6 Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician  
7 license to the board within ten (10) days of notification by the board that the surrender is  
8 accepted. Respondent may not reapply for any license, permit, or registration from the board for  
9 three (3) years from the effective date of the surrender. Respondent shall meet all requirements  
10 applicable to the license sought as of the date the application for that license is submitted to the  
11 board.

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

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

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

21 **12. Tolling of Probation**

22 Except during periods of suspension, respondent shall, at all times while on probation, be  
23 employed as a pharmacy technician in California for a minimum of ten (10) hours per calendar  
24 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,  
25 the period of probation shall be extended by one month for each month during which this  
26 minimum is not met. During any such period of tolling of probation, respondent must  
27 nonetheless comply with all terms and conditions of probation.

28 Should respondent, regardless of residency, for any reason (including vacation) cease

1 working as a pharmacy technician for a minimum of ten (10) hours per calendar month in  
2 California, respondent must notify the board in writing within ten (10) days of cessation of work  
3 and must further notify the board in writing within ten (10) days of the resumption of the work.  
4 Any failure to provide such notification(s) shall be considered a violation of probation.

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

8 "Cessation of work" means calendar month during which respondent is not working  
9 for at least ten (10) hours as a pharmacy technician, as defined in Business and Professions  
10 Code section 4115. "Resumption of work" means any calendar month during which  
11 respondent is working as a pharmacy technician for at least ten (10) hours as a pharmacy  
12 technician as defined by Business and Professions Code section 4115.

### 13 13. **Violation of Probation**

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

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

### 26 14. **Completion of Probation**

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

1           **15. Random Drug Screening**

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

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

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

1 otherwise specified in this order.

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

3 **16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups In**  
4 **the Event of A Positive Drug Screening**

5 In the event that, at any time during the probation period, biological fluid testing (urine,  
6 blood), breathalyzer, hair follicle testing, or other drug screening program results in a positive  
7 outcome for a non-prescribed substance, Respondent shall be required to attend substance abuse  
8 recovery relapse prevention and support groups as a condition of her probation.

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

17 **17. Work Site Monitor**

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

28 ///

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

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

13           **19. No Ownership of Licensed Premises**

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

21           **20. Notification of Departure**

22           Prior to leaving the probationary geographic area designated by the board or its designee for  
23 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in  
24 writing of the dates of departure and return. Failure to comply with this provision shall be  
25 considered a violation of probation.

26           **21. Community Services Program**

27           Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
28 board or its designee, for prior approval, a community service program in which respondent shall

1 provide free health-care related services on a regular basis to a community or charitable facility or  
2 agency for at least 50 (fifty) hours per year for the first three years of probation. Within thirty  
3 (30) days of board approval thereof, respondent shall submit documentation to the board  
4 demonstrating commencement of the community service program. A record of this notification  
5 must be provided to the board upon request. Respondent shall report on progress with the  
6 community service program in the quarterly reports. Failure to timely submit, commence, or  
7 comply with the program shall be considered a violation of probation.

8 **22. 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 who will  
13 coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled  
14 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of  
15 the board's Stipulated Settlement and Disciplinary Order and final 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  
22 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a  
23 specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent,  
24 for any 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  
28 replacement practitioner to the board for approval, or to ensure the required reporting thereby on

1 the quarterly reports, shall be considered a violation of probation.

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

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

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

19 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
20 licensed premises in which she holds an interest at the time this decision becomes effective unless  
21 otherwise specified in this order. Failure to comply with this suspension shall be considered a  
22 violation of probation.

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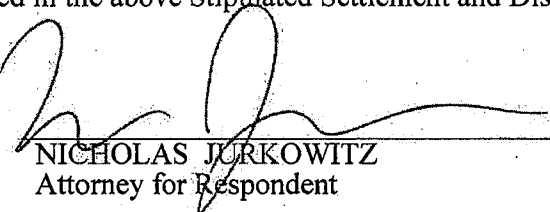
28 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Nicholas Jurkowitz. I understand the stipulation and the effect it  
4 will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and  
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
6 Decision and Order of the Board of Pharmacy.

7  
8 DATED: 2/27/12   
9 GABRIELA GALLEGOS  
Respondent

10 I have read and fully discussed with Respondent Gabriela Gallegos the terms and  
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
12 I approve its form and content.

13 DATED: 2/27/2012   
14 NICHOLAS JURKOWITZ  
Attorney for Respondent


15  
16 ENDORSEMENT

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

19 Dated: 2-27-12

Respectfully submitted,

20 KAMALA D. HARRIS  
Attorney General of California  
21 GREGORY J. SALUTE  
Supervising Deputy Attorney General

22   
23 SUSAN MELTON WILSON  
24 Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 3928**

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1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 SUSAN MELTON WILSON  
Deputy Attorney General  
4 State Bar No. 106902  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-4942  
6 Facsimile: (213) 897-2804  
E-mail: Susan.Wilson@doj.ca.gov  
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 First Amended Accusation	Case No. 3928
12 Against:	
13 <b>GABRIELA GALLEGOS</b>	<b>FIRST AMENDED</b>
14 3840 Walnut	<b>ACCUSATION</b>
15 Lynwood, CA 90262	
16 Pharmacy Technician Registration No. TCH 36152	
17 Respondent.	

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 June 8, 2001, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 36152 to Gabriela Gallegos (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on July 31, 2012, unless renewed.

25 **JURISDICTION**

- 26
- 27 3. The Accusation in this matter was initially filed on July 6, 2011, and duly served to  
28 Respondent, who filed her timely Notice of Defense. This First Amended Accusation is brought

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

4 4. Section 4300 of the Code states:

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

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

9 "(1) Suspending judgment.

10 "(2) Placing him or her upon probation.

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

12 "(4) Revoking his or her license.

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

15 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
16 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
17 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
18 may issue the license subject to any terms or conditions not contrary to public policy, including,  
19 but not limited to, the following:

20 "(1) Medical or psychiatric evaluation.

21 "(2) Continuing medical or psychiatric treatment.

22 "(3) Restriction of type or circumstances of practice.

23 "(4) Continuing participation in a board-approved rehabilitation program.

24 "(5) Abstention from the use of alcohol or drugs.

25 "(6) Random fluid testing for alcohol or drugs.

26 "(7) Compliance with laws and regulations governing the practice of pharmacy.

27 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
28 certificate of licensure for any violation of the terms and conditions of probation. Upon

1 satisfactory completion of probation, the board shall convert the probationary certificate to a  
2 regular certificate, free of conditions.

3 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
4 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
5 shall have all the powers granted therein. The action shall be final, except that the propriety of  
6 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
7 Civil Procedure."

8 5. Section 4301 of the Code states:

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

12 ...

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

16 ...

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

22 ...

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

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

12 ...  
13 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
14 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
15 federal and state laws and regulations governing pharmacy, including regulations established by  
16 the board or by any other state or federal regulatory agency.

17 ...  
18 "(p) Actions or conduct that would have warranted denial of a license.

19 ...  
20 6. Section 4059, subdivision (a) of the Code provides in pertinent part that a person  
21 may not furnish any dangerous drug, except upon the prescription of a physician, dentist,  
22 podiatrist, optometrist, veterinarian or other legally authorized prescriber.

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

27 **REGULATORY PROVISIONS**

28 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

7                                   **COST RECOVERY**

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

12                                   **DRUG CLASSIFICATIONS**

13           10.    **Carisoprodol** - also known by the brand name “Soma,” is a muscle relaxant used  
14 for relief of pain. It is not a controlled substance but is categorized as a dangerous drug pursuant  
15 to Business and Professions Code section 4022.

16           11.    **Tramadol** - also known by the brand name “Ultram” is a used for relief of  
17 moderate to severe pain. It is not a controlled substance but is categorized as a dangerous drug  
18 pursuant to Business and Professions Code section 4022.

19                                   **FIRST CAUSE FOR DISCIPLINE**

20                                   **(Convictions For Substantially Related Crimes)**

21           12.    Respondent is subject to disciplinary action under section 4301, subdivision (l) and  
22 section 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
23 Respondent was convicted of a crimes substantially related to the qualifications, functions or  
24 duties of a pharmacy technician on in two instances as follows:

25                                   **DRIVING UNDER INFLUENCE OF ALCOHOL (2010)**

26           a.     On or about November 19, 2010, pursuant to a plea agreement, Respondent was  
27 convicted after pleading guilty to a misdemeanor violation of Vehicle Code section 23152(b)  
28

1 [Driving Under The Influence /Blood Alcohol Level Exceeding .08%] in the criminal proceeding  
2 entitled *People of the State of California v. Gabriela Gallegos* (Super. Ct. Los Angeles County,  
3 2010, No. 0BF0376401). Respondent was placed on probation for a period of 3 years, required to  
4 complete a First Offender Program and ordered to pay fines and specified fees.

5  
6 b. The circumstances of the conviction are that on or about June 5, 2010, California  
7 Highway Patrol officers on routine patrol noticed two vehicles parked on the shoulder of the  
8 freeway flashing emergency lights and stopped to assist. Drivers of both vehicles were instructed  
9 to exit the freeway. In interacting with one of the drivers, identified as Respondent, one of the  
10 officers smelled the odor of alcohol coming from her vehicle. The officer inquired whether she  
11 had been drinking. Respondent admitted that she had ingested "about 4 small bottles of (beer)" at  
12 a bar prior to driving. A series of field sobriety tests were administered, which Respondent was  
13 unable to complete in a satisfactory manner. She was then arrested. Subsequent alcohol screening  
14 showed .105 and .115 blood alcohol content.

#### 15 **DRIVING WITHOUT A VALID LICENSE (2011)**

16 c. On or about July 26, 2011, pursuant to a plea agreement, Respondent was convicted  
17 after pleading nolo contendere to a misdemeanor violation of Vehicle Code section 12500(A)  
18 [Violation of License Requirements/Driving Without a Valid License] in the criminal proceeding  
19 entitled *People of the State of California v. Gabriela Gallegos* (Super. Ct. Los Angeles County,  
20 2011, No. 1 LT 08769). Imposition of Sentence was suspended, and Respondent placed on  
21 probation for one (1) year, ordered to pay fines and fees, and to perform 10 days of community  
22 service.

23 d. The circumstances of the conviction are that on or about January 14, 2011, Long  
24 Beach Police Department Officers made a routine traffic stop of Respondent's vehicle, after  
25 observing Respondent driving while using a cell phone [Vehicle Code § 23123 (A)]. Officers  
26 then ascertained that Respondent was driving with a suspended license [Vehicle Code § 14601.2  
27 A] and cited her for both violations.

28 ///

**SECOND CAUSE FOR DISCIPLINE**  
**(Dishonest Acts)**

1  
2 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), for  
3 dishonest acts, based on her admitted theft of prescriptions pain medications (**Carisoprodol** 350  
4 mg (30 tablets); and **Tramadol** 50 mg (30 tablets)) while on duty as a pharmacy technician at the  
5 inpatient pharmacy for Miller Children's Hospital ("Children's"), on or about November 26,  
6 2009, by reason of the following facts:

7  
8 a. On or about November 26, 2009, Respondent was on duty as a pharmacy technician  
9 for the in-patient pharmacy at Children's, where she had been employed since 2002.

10 b. Children's is part of and adjacent to Long Beach Memorial Hospital (LBMH). Staff at  
11 the in-patient pharmacy of Children's routinely obtained out-of-stock medications as needed from  
12 the larger LBMH pharmacy. Further, pharmacy staff at both facilities could access medication  
13 records for all patients at Children's and LBMH, via an integrated computer program.

14  
15 c. On or about 12:30 pm, Respondent faxed a request for 30 tablets of Carisoprodol 350  
16 mg and 30 tablets of Tramadol 50 mg to the LBMH pharmacy.

17 d. When the order was delivered to Children's – the receiving technician questioned the  
18 order, as no Children's patient was currently using either medication. Respondent told the  
19 technician "these are mine" – then took the package of medications.

20  
21 e. On or about November 29, 2009, during her shift, co-workers observed that  
22 Respondent seemed sedated, and throughout the morning was unusually irritable and made  
23 frequent mistakes. At the lunch break, Respondent stated she was "really tired" and planned to  
24 take a nap. Respondent failed to return to work on time and was eventually sent home.  
25 Suspicions about the cause of Respondent's altered behavior resulted in investigation of  
26 Respondent's faxed order to LBMH two days earlier.

27  
28 f. On or about December 4, 2009 Respondent was confronted by Children's supervisory



1 staff about her order for Carisoprodol and Tramadol on November 26. Respondent confirmed that  
2 she had ordered the medications – then admitted that she had diverted the drugs for personal use.

3 g. Respondent was terminated from her employment at Children's effective December  
4 7, 2009.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Furnishing of Dangerous Drugs Without A Prescription )**

7 14. Respondent is subject to disciplinary action under section 4301, subdivision (o), in  
8 conjunction with Business and Professions Code section 4059, subdivision (a) in that, by her own  
9 admission, while on duty as a pharmacy technician at Miller Children's Hospital Pharmacy, on or  
10 about November 26, 2009, Respondent furnished to herself, by ordering then diverted for  
11 personal use, dangerous drugs Carisoprodol and Tramadol, as described more fully in paragraph  
12 13 above.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Impaired Safety Due to Use of Alcohol )**

14 15. Respondent is subject to disciplinary action under Code section 4301, subdivision  
15 (h), based on alcohol related misconduct on June 5, 2010, resulting in her conviction for driving  
16 under the influence of alcohol by reason of the following facts:

17 **a. Driving Under the Influence**

18 On or about June 5, 2010, Respondent used alcoholic beverages to an extent or in a  
19 manner or injurious to herself or the public, when she operated a motor vehicle while having  
20 blood alcohol content per alcohol screening test results of .105 and .115% , resulting in her  
21 conviction for driving under the influence under Vehicle Code section 23152(B), a misdemeanor,  
22 as described in paragraph 12 above.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Conduct That Would Have Warranted Denial of a License)**

25 16. Respondent is subject to disciplinary action under section 4301, subdivision (p), in  
26 that Respondent has engaged in multiple acts of misconduct, each of which would have warranted  
27 denial of a license, as follows:  
28

1 **a. Substantially Related Criminal Convictions - Driving Under the**  
2 **Influence of Alcohol (2010) and Driving Without a Valid License (2011)**

3 Complainant refers to, and by this reference incorporates, the allegations of paragraph  
4 12 as though fully set forth.

5 **b. Dishonest Acts: On-the-Job-Theft of Drug Stock**

6 Complainant refers to, and by this reference incorporates, the allegations of  
7 paragraph 13 as though fully set forth.

8 **c. Furnishing of Drugs Without Prescription**

9 Complainant refers to, and by this reference incorporates, the allegations of paragraph  
10 14 as though fully set forth.

11 **d. Impaired Safety Due to Drugs and Alcohol**

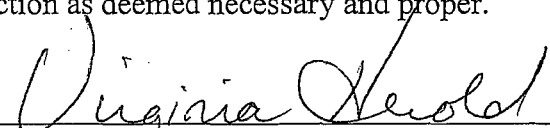
12 Complainant refers to, and by this reference incorporates the allegations of  
13 paragraphs 15 as though fully set forth.

14 **PRAYER**

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

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 36152,  
18 issued to Gabriela Gallegos;
- 19 2. Ordering Gabriela Gallegos to pay the Board of Pharmacy the reasonable costs of the  
20 investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 2/13/12

  
24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
Complainant

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