

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

In the Matter of the Accusation Against:

MARY S. FERNANDEZ
503 Oak Vista Place
Santa Rosa, CA 95409

Pharmacy Technician License No. TCH 29486

Respondent.

Case No. 4365

OAH No. 2013020380

DECISION AND ORDER

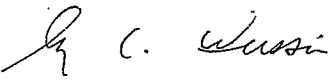
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 21, 2013.

It is so ORDERED on July 22, 2013.

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 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
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Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:

Case No. 4365

12 **MARY S. FERNANDEZ**
13 **503 Oak Vista Place**
Santa Rosa, CA 95409
14 **Pharmacy Technician License No. TCH**
29486

OAH No. 2013020380

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
19 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
20 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

21 PARTIES

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

26 2. Respondent Mary S. Fernandez (Respondent) is represented in this proceeding by
27 attorney James N. Eimers, whose address is:
28 Fountaingrove Corporate Centre I
3510 Unocal Place, Suite 200
Santa Rosa CA 95403-0918

1 3. On or about May 28, 1999, the Board of Pharmacy issued Pharmacy Technician
2 License No. TCH 29486 to Mary S. Fernandez (Respondent). The Pharmacy Technician License
3 was in full force and effect at all times relevant to the charges brought in Accusation No. 4365
4 and will expire on November 30, 2014, unless renewed.

5 JURISDICTION

6 4. Accusation No. 4365 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on November 9, 2012.
9 Respondent timely filed her Notice of Defense contesting the Accusation.

10 5. A copy of Accusation No. 4365 is attached as exhibit A and incorporated herein by
11 reference.

12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 4365. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

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

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

26 CULPABILITY

27 9. Respondent admits the truth of each and every charge and allegation in Accusation
28

1 No. 4365.

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

5 CIRCUMSTANCES IN MITIGATION

6 11. Respondent Mary S. Fernandez has never been the subject of any disciplinary action.
7 She is admitting responsibility at an early stage in the proceedings.

8 CONTINGENCY

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

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

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

27
28

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 29486 issued to
6 Respondent Mary S. Fernandez (Respondent) is revoked. However, the revocation is stayed and
7 Respondent is placed on probation for five (5) years on the following terms and conditions.

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

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

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

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

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

27 **2. Obey All Laws**

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

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

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

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

14 3. Report to the Board

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

23 4. Interview with the Board

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

1 **5. Cooperate with Board Staff**

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

5 **6. Notice to Employers**

6 During the period of probation, respondent shall notify all present and prospective
7 employers of the decision in case number 4365 and the terms, conditions and restrictions imposed
8 on respondent by the decision, as follows:

9 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
10 respondent undertaking any new employment, respondent shall cause her direct supervisor,
11 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
12 tenure of employment) and owner to report to the board in writing acknowledging that the listed
13 individual(s) has/have read the decision in case number 4365 and the terms and conditions
14 imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or
15 supervisor(s) submit timely acknowledgement(s) to the board.

16 If respondent works for or is employed by or through a pharmacy employment service,
17 respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy
18 of the terms and conditions of the decision in case number 4365 in advance of the respondent
19 commencing work at each pharmacy. A record of this notification must be provided to the board
20 upon request.

21 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
22 (15) days of respondent undertaking any new employment by or through a pharmacy employment
23 service, respondent shall cause her direct supervisor with the pharmacy employment service to
24 report to the board in writing acknowledging that she has read the decision in case number 4365
25 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
26 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

27 Failure to timely notify present or prospective employer(s) or to cause that/those
28 employer(s) to submit timely acknowledgements to the board shall be considered a violation of

1 probation.

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

7 **7. Reimbursement of Board Costs**

8 As a condition precedent to successful completion of probation, respondent shall pay to the
9 board its costs of investigation and prosecution in the amount of \$2,395.00. Respondent shall
10 make said payments as follows: monthly payments in the amount of \$66.52 for 36 months. There
11 shall be no deviation from this schedule absent prior written approval by the board or its designee.
12 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

15 **8. Probation Monitoring Costs**

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

20 **9. Status of License**

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

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

28

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

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

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

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

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

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

25 **12. Tolling of Probation**

26 Except during periods of suspension, respondent shall, at all times while on probation, be
27 employed as a pharmacy technician in California for a minimum of 40 hours per calendar month.
28 Any month during which this minimum is not met shall toll the period of probation, i.e., the

1 period of probation shall be extended by one month for each month during which this minimum is
2 not met. During any such period of tolling of probation, respondent must nonetheless comply
3 with all terms and conditions of probation.

4 Should respondent, regardless of residency, for any reason (including vacation) cease
5 working as a pharmacy technician for a minimum of 40 hours per calendar month in California,
6 respondent must notify the board in writing within ten (10) days of cessation of work and must
7 further notify the board in writing within ten (10) days of the resumption of the work. Any
8 failure to provide such notification(s) shall be considered a violation of probation.

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

12 "Cessation of work" means calendar month during which respondent is not
13 working for at least 40 hours as a pharmacy technician, as defined in Business and
14 Professions Code section 4115. "Resumption of work" means any calendar month
15 during which respondent is working as a pharmacy technician for at least 40 hours as
16 a pharmacy technician as defined by Business and Professions Code section 4115.

17 **13. Violation of Probation**

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

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

1 extended until the petition to revoke probation or accusation is heard and decided.

2 **14. Completion of Probation**

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

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

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

13 **16. 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 **17. Notification of Departure**

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

1 **18. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

2 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
3 attendance at a recognized and established substance abuse recovery support group in California,
4 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board
5 or its designee. Respondent must attend at least one group meeting per week unless otherwise
6 directed by the board or its designee. Respondent shall continue regular attendance and submit
7 signed and dated documentation confirming attendance with each quarterly report for the duration
8 of probation. Failure to attend or submit documentation thereof shall be considered a violation of
9 probation.

10 **19. Random Drug Screening**

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

27 During any such suspension, respondent shall not enter any pharmacy area or any portion of
28 or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any

1 other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs
2 and devices or controlled substances are maintained. Respondent shall not do any act involving
3 drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall
4 respondent manage, administer, or assist any licensee of the board. Respondent shall not direct,
5 control or perform any aspect of the practice of pharmacy. 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 Failure to comply with any such suspension shall be considered a violation of probation.

9 **20. Abstain from Drugs and Alcohol Use**

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

21 **21. Prescription Coordination and Monitoring of Prescription Use**

22 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
23 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
24 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
25 history with the use of alcohol, controlled substances, and/or dangerous drugs, and who will
26 coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled
27 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
28 the board's [accusation or petition to revoke probation] and decision. A record of this notification

1 must be provided to the board upon request. Respondent shall sign a release authorizing the
2 practitioner to communicate with the board about respondent's treatment(s). The coordinating
3 physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a
4 quarterly basis for the duration of probation regarding respondent's compliance with this
5 condition. If any substances considered addictive have been prescribed, the report shall identify a
6 program for the time limited use of any such substances. The board may require that the single
7 coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in
8 addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any
9 reason, cease supervision by the approved practitioner, respondent shall notify the board
10 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
11 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the
12 board or its designee for its prior approval. Failure to timely submit the selected practitioner or
13 replacement practitioner to the board for approval, or to ensure the required reporting thereby on
14 the quarterly reports, shall be considered a violation of probation.


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

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

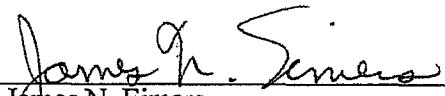
1 Failure to comply with any such suspension shall be considered a violation of probation.

2 ACCEPTANCE

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

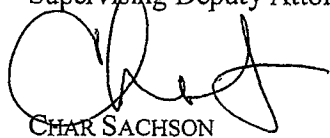
8
9 DATED: 6-3-2013 
10 MARY S. FERNANDEZ
Respondent

11 I have read and fully discussed with Respondent Mary S. Fernandez the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
13 I approve its form and content.

14 DATED: 6-3-2013 
15 James N. Eimers
16 Attorney for Respondent

17 ENDORSEMENT

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

20 Dated: 6/10/13
21 Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 FRANK H. PACOE
25 Supervising Deputy Attorney General
26 
27 CHAR SACHSON
28 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4365

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 4365

11 **MARY S. FERNANDEZ**
12 **3577 Kelsey Knolls**
13 **Santa Rosa, CA 95403**

ACCUSATION

14 **Pharmacy Technician License No. TCH**
29486

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 May 28, 1999, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 29486 to Mary S. Fernandez (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 November 30, 2012, 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.

1 4. Section 4300 of the Code states:

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

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

6 "(1) Suspending judgment.

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

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

9 "(4) Revoking his or her license.

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

12 ..."

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

18 5. Section 4301 of the Code states:

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

22 ...

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

26 ...

27 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
28 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to

1 oneself, to a person holding a license under this chapter, or to any other person or to **the** public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to **the** public the
3 practice authorized by the license.

4 ...
5 "(j) The violation of any of the statutes of this state, or any other state, or of **the** United
6 States regulating controlled substances and dangerous drugs.

7 ...
8 "(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the **crime**, in order
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment.

25 ...
26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the **applicable**

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency.

3 "

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

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

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

15 8. Section 4022 of the Code states:

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

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

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

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

25 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
26 controlled substance, except that furnished upon a valid prescription/drug order.

27 10. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
28 any controlled substance in Schedule II, subdivision (d), without a prescription.

1 real easy to get now! You're not going to live through this!" Respondent got into her
2 car, and as she sped off, she yelled "You're a dead bitch!"

3 e. On or about August 20, 2010, Respondent was again seen within 100 feet of K.C.'s
4 home, in violation of a court order.

5 FIRST CAUSE FOR DISCIPLINE

6 (CRIMINAL CONVICTION)

7 15. Respondent is subject to disciplinary action under sections 4301(l), 4301(o), and/or
8 490, and California Code of Regulations, title 16, section 1770, in that on or about April 8, 2011,
9 in a criminal proceeding entitled *The People of the State of California v. Mary Sonoma*
10 *Fernandez* in Sonoma County Superior Court, Case Number SCR-578861, Respondent was
11 convicted of violating Penal Code section 422 (making criminal threats), a felony. Respondent
12 was sentenced to serve four months jail time, 36 months formal probation, and ordered to pay
13 fines and fees in the amount of \$1,802.00. The circumstances of the conviction are that
14 Respondent violated a protective order several times, as described above in paragraph 14.

15 SECOND CAUSE FOR DISCIPLINE

16 (USE OF CONTROLLED SUBSTANCE)

17 16. Respondent is subject to disciplinary action under section 4301(h), in that on or about
18 March 1, 2010, her urine sample tested positive for methamphetamine and amphetamine (a
19 metabolite of methamphetamine).

20 THIRD CAUSE FOR DISCIPLINE

21 (USE OF CONTROLLED SUBSTANCE)

22 17. Respondent is subject to disciplinary action under sections 4301(j), 4301(o), 4060,
23 and Health and Safety Code section 11377, in that on or about March 1, 2010, her urine sample
24 tested positive for methamphetamine and amphetamine (a metabolite of methamphetamine).

25 FOURTH CAUSE FOR DISCIPLINE

26 (UNPROFESSIONAL CONDUCT)

27 18. Respondent is subject to disciplinary action under sections 4301(f) and/or 4301(o) in
28 that she acted unprofessionally, and/or committed acts involving moral turpitude. The

1 circumstances are described above in paragraph 14.

2 PRAYER

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

5 1. Revoking or suspending Pharmacy Technician Registration Number TCH 29486,
6 issued to Mary S. Fernandez;

7 2. Ordering Mary S. Fernandez to pay the Board of Pharmacy the reasonable costs of
8 the investigation and enforcement of this case, pursuant to Business and Professions Code section
9 125.3;

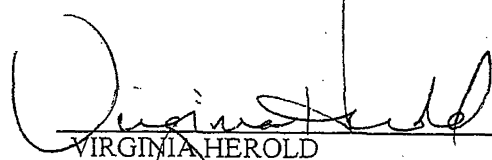
10 ///

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

12

13

14 DATED: 11/2/12



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

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