

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

In the Matter of the Statement of Issues Against:

Case No. 4175

TOMMY MITCHELL CASTRO
4439 W. Harvard Avenue
Fresno, CA 93722
Pharmacy Technician Application

Respondent.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

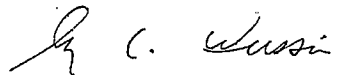
DECISION AND ORDER

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 4, 2012.

It is so ORDERED on April 4, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

11 In the Matter of the Statement of Issues
12 Against:

13 **TOMMY MITCHELL CASTRO**
14 **4439 W. Harvard Avenue**
15 **Fresno, CA 93722**
16 **Pharmacy Technician License**

16 Respondent.

Case No. 4175

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

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

20 **PARTIES**

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

25 2. Respondent Tommy Mitchell Castro (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about December 8, 2010, Respondent filed an application dated December 6,
28 2010, with the Board of Pharmacy to obtain a Pharmacy Technician License.

1 **JURISDICTION**

2 4. Statement of Issues No. 4175 was filed before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of
4 Issues and all other statutorily required documents were properly served on Respondent on
5 November 29, 2011. A copy of Statement of Issues No. 4175 is attached as Exhibit A and
6 incorporated herein by reference.

7 **ADVISEMENT AND WAIVERS**

8 5. Respondent has carefully read, and understands the charges and allegations in
9 Statement of Issues No. 4175. Respondent has also carefully read, and understands the effects of
10 this Stipulated Settlement and Disciplinary Order.

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

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

20 **CULPABILITY**

21 8. Respondent admits the truth of each and every charge and allegation in Statement of
22 Issues No. 4175.

23 9. Respondent agrees that his Pharmacy Technician License is subject to denial and he
24 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

25 **CONTINGENCY**

26 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
27 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
28 communicate directly with the Board regarding this stipulation and settlement, without notice to

1 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
2 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
3 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
4 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
5 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
6 not be disqualified from further action by having considered this matter.

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

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

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

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that Respondent Tommy Mitchell Castro that Pharmacy
21 Technician License will be issued and immediately revoked. The revocation will be stayed and
22 the Respondent placed on four (4) years probation on the following terms and conditions.

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

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

1 pharmacy technician until notified by the board.

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

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

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

14 **2. Obey All Laws**

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

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

- 18 an arrest or issuance of a criminal complaint for violation of any provision of the
19 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
20 substances laws
- 21 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
22 criminal complaint, information or indictment
- 23 a conviction of any crime
- 24 discipline, citation, or other administrative action filed by any state or federal agency
25 which involves respondent's pharmacy technician license or which is related to the
26 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
27 or charging for any drug, device or controlled substance.

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

1. **3. Report to the Board**

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

10 **4. Interview with the Board**

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

16 **5. Cooperate with Board Staff**

17 Respondent shall cooperate with the board's inspection program and with the board's
18 monitoring and investigation of respondent's compliance with the terms and conditions of his
19 probation. Failure to cooperate shall be considered a violation of probation.

20 **6. Notice to Employers**

21 During the period of probation, respondent shall notify all present and prospective
22 employers of the decision in case number 4175 and the terms, conditions and restrictions imposed
23 on respondent by the decision, as follows:

24 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
25 respondent undertaking any new employment, respondent shall cause his direct supervisor,
26 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
27 tenure of employment) and owner to report to the board in writing acknowledging that the listed
28 individual(s) has/have read the decision in case number 4175 and the terms and conditions

1 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
2 supervisor(s) submit timely acknowledgement(s) to the board.

3 If respondent works for or is employed by or through a pharmacy employment service,
4 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
5 of the terms and conditions of the decision in case number 4175 in advance of the respondent
6 commencing work at each pharmacy. A record of this notification must be provided to the board
7 upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of respondent undertaking any new employment by or through a pharmacy employment
10 service, respondent shall cause his direct supervisor with the pharmacy employment service to
11 report to the board in writing acknowledging that he has read the decision in case number 4175
12 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
13 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

22 **7. Probation Monitoring Costs**

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

27 **8. Status of License**

28 Respondent shall, at all times while on probation, maintain an active, current pharmacy

1 technician license with the board, including any period during which suspension or probation is
2 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

7 **9. License Surrender While on Probation/Suspension**

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

16 Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician
17 license to the board within ten (10) days of notification by the board that the surrender is
18 accepted. Respondent may not reapply for any license, permit, or registration from the board for
19 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
20 applicable to the license sought as of the date the application for that license is submitted to the
21 board.

22 **10. Notification of a Change in Name, Residence Address, Mailing Address or**
23 **Employment**

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

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

3 **11. Tolling of Probation**

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

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

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

18 "Cessation of work" means calendar month during which respondent is not
19 working for at least 20 hours as a pharmacy technician, as defined in Business and
20 Professions Code section 4115. "Resumption of work" means any calendar month
21 during which respondent is working as a pharmacy technician for at least 20 hours as
22 a pharmacy technician as defined by Business and Professions Code section 4115.

23 **12. Violation of Probation**

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

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

8 **13. Completion of Probation**

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

11 **14. No Ownership of Licensed Premises**

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

19 **15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

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

28

1 **16. Random Drug Screening**

2 Respondent, at his 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 he 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 **17. Work Site Monitor**

4 Within ten (10) days of the effective date of this decision, respondent shall identify a work
5 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
6 during working hours. Respondent shall be responsible for ensuring that the work site monitor
7 reports in writing to the board quarterly. Should the designated work site monitor determine at
8 any time during the probationary period that respondent has not maintained sobriety, he shall
9 notify the board immediately, either orally or in writing as directed. Should respondent change
10 employment, a new work site monitor must be designated, for prior approval by the board, within
11 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
12 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
13 considered a violation of probation.

14 **18. Notification of Departure**

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

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

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


1 not supported by the documentation timely provided, and/or any physical proximity to persons
2 using illicit substances, shall be considered a violation of probation.

3
4 ACCEPTANCE

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

9
10 DATED:

2/6/12


TOMMY MITCHELL CASTRO
Respondent

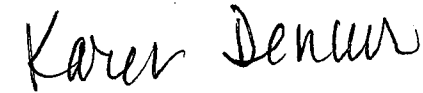
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14
15 ENDORSEMENT

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

18
19 Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General


KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 4175

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13 **4439 W. Harvard Avenue**
14 **Fresno, CA 93722**
Pharmacy Technician License

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about December 8, 2010, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a/an Pharmacy Technician License from Tommy Mitchell
23 Castro (Respondent). On or about December 6, 2010, Tommy Mitchell Castro certified under
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on June 21, 2011.

26 ///

27 ///

28 ///

JURISDICTION

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

4. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

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

....

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

5. Section 4300 of the Code states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

....

6. Section 4301 of the Code states, in pertinent part:

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

....

1 (k) The conviction of more than one misdemeanor or any felony involving the use,
2 consumption, or self-administration of any dangerous drug or alcoholic beverage, or
any combination of those substances.

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

13

14
15 **FIRST CAUSE FOR DENIAL OF APPLICATION**

16 **(Criminal Convictions)**

17 7. Respondent's application is subject to denial under section 480(a)(1), in that he was
18 convicted of the following crimes that are substantially related to the qualifications, functions or
19 duties of the profession for which he is applying:

20 a. On or about June 4, 2009, in a criminal proceeding entitled *People v. Tommy Mitchell*
21 *Castro* in Fresno County Superior Court, Case Number M08927830, Respondent was convicted
22 by plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood
23 alcohol content of .08% or higher), a misdemeanor. Respondent admitted the enhancement under
24 Vehicle Code section 23578 (driving with a blood alcohol content of .15% or higher, and the plea
25 contained a stipulation that Respondent's blood alcohol content was .16%.

26 b. On or about June 4, 2009, in a criminal proceeding entitled *People v. Tommy Mitchell*
27 *Castro* in Fresno County Superior Court, Case Number M09912944, Respondent was convicted
28 by plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood

1 alcohol content of .08% or higher), a misdemeanor. Respondent admitted the enhancement under
2 Vehicle Code section 23578 (driving with a blood alcohol content of .15% or higher, and the plea
3 contained a stipulation that Respondent's blood alcohol content was .22%.

4 c. On or about June 4, 2009, in a criminal proceeding entitled *People v. Tommy Mitchell*
5 *Castro* in Fresno County Superior Court, Case Number M09912955, Respondent was convicted
6 by plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood
7 alcohol content of .08% or higher), a misdemeanor. Respondent admitted the enhancement of a
8 prior conviction of Vehicle Code section 23152(b), and the plea contained a stipulation that
9 Respondent's blood alcohol content was .14.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Act that if Done by Licentiate Would be Grounds for Suspension or Revocation)**

12 8. Respondent's application is subject to denial under section 480(a)(3), in that he
13 committed acts that if done by a licentiate would be grounds for suspension or revocation, under
14 Code section 4301 subdivisions (k) and (l), as set forth more fully in paragraph 7, above.

15 **PRAYER**

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

- 18 1. Denying the application of Tommy Mitchell Castro for a Pharmacy Technician
19 License;
20 2. Taking such other and further action as deemed necessary and proper.

21 DATED: 11/1/11



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

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