

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

In the Matter of the Statement of Issues Against:

Case No. 4357

**ERIC MONTES**  
1440 Carlisle Avenue  
Modesto, CA 95356

OAH No. 2014040414

Pharmacy Technician Registration Applicant

Respondent.

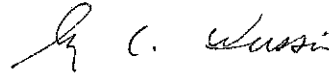
**DECISION AND ORDER**

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

This decision shall become effective on November 7, 2014.

It is so ORDERED on October 31, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
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7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues  
Against:

12 **ERIC MONTES**

13 **Pharmacy Technician Registration**  
14 **Applicant**

15 Respondent.

Case No. 4357

OAH No. 201404040414

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

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

19 PARTIES

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

24 2. On or about May 23, 2011, Respondent filed an application dated May 19, 2011, with  
25 the Board of Pharmacy to obtain a Pharmacy Technician Registration. Respondent is  
26 representing himself in this proceeding and has chosen not to exercise his right to be represented  
27 by legal counsel.

28 //





1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Respondent's Pharmacy Technician Registration will be  
3 issued and immediately revoked. The revocation will be stayed and the Respondent placed on  
4 three (3) years probation 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 his 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 his 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 his

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 4357 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 his 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 4357 and the terms and conditions  
11 imposed thereby. It shall be respondent's responsibility to ensure that his 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 his direct supervisor, pharmacist-in-charge and owner at every pharmacy  
15 of the terms and conditions of the decision in case number 4357 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 his direct supervisor with the pharmacy employment service to  
21 report to the board in writing acknowledging that his has read the decision in case number 4357  
22 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
23 that his 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. Probation Monitoring Costs**

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

9 **8. Status of License**

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

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

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

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

26 Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician  
27 license to the board within ten (10) days of notification by the board that the surrender is  
28 accepted. Respondent may not reapply for any license, permit, or registration from the board for

1 three (3) years from the effective date of the surrender. Respondent shall meet all requirements  
2 applicable to the license sought as of the date the application for that license is submitted to the  
3 board.

4 **10. Notification of a Change in Name, Residence Address, Mailing Address or**  
5 **Employment**

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

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

13 **11. Tolling of Probation**

14 Except during periods of suspension, respondent shall, at all times while on probation, be  
15 employed as a pharmacy technician in California for a minimum of 40 hours per calendar month.  
16 Any month during which this minimum is not met shall toll the period of probation, i.e., the  
17 period of probation shall be extended by one month for each month during which this minimum is  
18 not met. During any such period of tolling of probation, respondent must nonetheless comply  
19 with all terms and conditions of probation.

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

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

28 //

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

7 **12. Violation of Probation**

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

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

20 **13. Completion of Probation**

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

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

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

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

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

4 In the event that Respondent tests positive for alcohol, controlled substances, or dangerous  
5 drugs during probation, consistent with condition 16, below, respondent shall immediately begin  
6 regular attendance at a recognized and established substance abuse recovery support group in  
7 California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved  
8 by the board or its designee. Respondent must attend at least one group meeting per week unless  
9 otherwise directed by the board or its designee. Respondent shall continue regular attendance and  
10 submit signed and dated documentation confirming attendance with each quarterly report for the  
11 duration of probation. Failure to attend or submit documentation thereof shall be considered a  
12 violation of probation.

13 **16. Random Drug Screening**

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

1 board in writing.

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

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

15 **17. Work Site Monitor**

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

26 **18. Notification of Departure**

27 Prior to leaving the probationary geographic area designated by the board or its designee for  
28 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in

1 writing of the dates of departure and return. Failure to comply with this provision shall be  
2 considered a violation of probation.

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

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

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

16 Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
17 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
18 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
19 history with the use of alcohol, and who will coordinate and monitor any prescriptions for  
20 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved  
21 practitioner shall be provided with a copy of the board's Statement of Issues, Stipulated  
22 Settlement, and decision. A record of this notification must be provided to the board upon  
23 request. Respondent shall sign a release authorizing the practitioner to communicate with the  
24 board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician  
25 assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation  
26 regarding respondent's compliance with this condition. If any substances considered addictive  
27 have been prescribed, the report shall identify a program for the time limited use of any such  
28 substances. The board may require that the single coordinating physician, nurse practitioner,

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

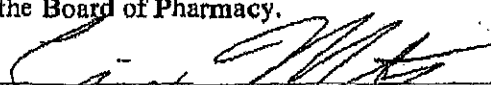
9 If at any time an approved practitioner determines that respondent is unable to practice  
10 safely or independently as a pharmacy technician, the practitioner shall notify the board  
11 immediately by telephone and follow up by written letter within three (3) working days. Upon  
12 notification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

15 During suspension, respondent shall not enter any pharmacy area or any portion of the  
16 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
17 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices  
18 or controlled substances are maintained. During suspension, Respondent shall not practice as a  
19 pharmacy technician nor do any act that requires registration as a pharmacy technician with the  
20 Board. Respondent shall not resume practice until notified by the board.

21  
22 ACCEPTANCE

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

27 DATED: 07/29/2014

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Eric Montes, Respondent

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ENDORSEMENT

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

Dated: 7/29/14

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JANICE K. LACHMAN  
Supervising Deputy Attorney General

  
JEFFREY M. PHILLIPS  
Deputy Attorney General  
*Attorneys for Complainant*

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32034367.doc

**Exhibit A**

**Statement of Issues No. 4357**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 JEFFREY M. PHILLIPS  
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4 State Bar No. 154990  
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6 Telephone: (916) 324-6292  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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11 **STATE OF CALIFORNIA**

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Case No. 4357

13 **ERIC MONTES**

**STATEMENT OF ISSUES**

14 **Pharmacy Technician Registration**  
15 **Applicant**

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 May 23, 2011, the Board of Pharmacy, Department of Consumer Affairs  
22 received an application for Pharmacy Technician Registration from Eric Montes (Respondent).

23 On or about May 19, 2011, Eric Montes certified under penalty of perjury to the truthfulness of all  
24 statements, answers, and representations in the application. The Board denied the application on  
25 April 2, 2012.

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1 volume), and Vehicle Code section 14601.2, subdivision (a), (driving while license suspended  
2 due to previous DUI), misdemeanors.

3 d. On or about October 27, 2010, in a criminal proceeding entitled *People v. Eric*  
4 *Montes* in Merced County Superior Court, Case Number AM219459, Respondent was convicted  
5 by plea of nolo contendere of violating Vehicle Code section 14601.2, subdivision (a), (driving  
6 with license suspended due to previous DUI), a misdemeanor.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Use of Alcohol to an Extent or in a Manner Dangerous to Self or Others)**

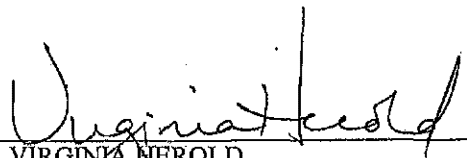
9 8. Respondent's application is subject to denial under section 480, subdivision (a),  
10 paragraph (3), for committing acts which if done by a licensee would subject him to discipline as  
11 defined by section 4301, subdivision (h), unprofessional conduct, in that Respondent used alcohol  
12 to an extent or in a manner dangerous to himself or others by driving a vehicle upon a public  
13 roadway while under the influence of alcohol on two (2) occasions as described in paragraph 8,  
14 subdivisions (b) and (c), 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 Eric Montes for a Pharmacy Technician Registration;  
19 2. Taking such other and further action as deemed necessary and proper.

20  
21  
22 DATED: 2/14/14

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

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