

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

In the Matter of the Petition to Revoke  
Probation Against:

Case No. 4517

**Marlene Ramirez**

OAH No. 2013120511

Pharmacy Technician Registration No. TCH 52404

Respondent.

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to paragraph one on page one under Factual Findings:

“On July 18, 2013, complainant filed a petition to revoke probation against respondent alleging that respondent violated at least three conditions of her probation, which went into effect on September 13, 2011.”

The Following technical change is made to paragraph four on page two under Background and License History:

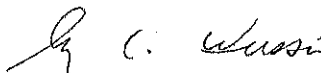
“On May 6, 2010, the board filed Accusation in Case No. 3612 against respondent.”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on December 26, 2014.

This decision shall become effective on February 2, 2015.

IT IS SO ORDERED this 2<sup>nd</sup> day of January 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

MARLENE RAMONA RAMIREZ,  
  
Pharmacy Tech. Reg. No. TCH 52404  
  
Respondent.

Case No. 4517

OAH No. 2013120511

**PROPOSED DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on October 30, 2014.

Karen L. Gordon, Deputy Attorney General, Department of Justice, State of California, represented complainant, Virginia Herold, Executive Officer of the Board of Pharmacy.

Marlene Ramona Ramirez, respondent, appeared on her own behalf and was present throughout the proceeding.

The matter was submitted on October 30, 2014.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On July 13, 2013, complainant filed a petition to revoke probation against respondent alleging that respondent violated at least three conditions of her probation, which went into effect on September 15, 2011.
2. On September 16, 2013, respondent timely filed a notice of defense and this hearing followed.

### *Background and License History*

3. On January 7, 2004, the California State Board of Pharmacy (the board) issued Marlene Ramona Ramirez (respondent) original technician registration number TCH 52404.

4. On April 6, 2010, the board filed Accusation in Case No. 3612 against respondent. The accusation alleged that respondent was convicted of misdemeanor Malicious Disturbance on December 8, 2008, and felony Assault with a Deadly Weapon on September 18, 2008. The respondent and the board entered into a stipulated agreement regarding the allegations in the accusation on May 16, 2011.

Based upon the stipulation, on August 16, 2011, the board issued a decision in Accusation No. 3612 effective September 15, 2011, that revoked respondent's pharmacy technician registration, stayed the revocation, and placed respondent on probation for a period of three years with nineteen different terms and conditions.

5. On September 13, 2011, respondent signed a declaration stating that she had appeared before representatives of the board, who fully explained all of the terms and conditions of probation to her, and that she fully understands those terms and conditions.

6. One of the terms and conditions of probation, Term and Condition 16, required respondent to participate in random drug screening at her own expense, including biological fluid testing. Condition 16 stated that respondent "may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee."

7. Another term and condition of probation, Condition 7, required respondent to reimburse the board its costs of investigation and prosecution in the total amount of \$250.00 through quarterly payments. The term and condition further stated as follows:

There shall be no deviation from any payment schedule absent prior written approval by the board and its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

8. Another term and condition of probation, Condition 19, required respondent to submit to the board for approval within sixty days of the effective date of the decision of September 15, 2011, "a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 100 hours for the entire term of probation." This term further provided requirements for the commencement and reporting on the status of the community service project. The term further stated "[f]ailure to timely submit, commence, or comply with the program should be considered a violation of probation."

*Testimony of Katherine Sill, Pharm.D.*

9. Katherine Sill received her Doctor of Pharmacy degree in 1988 from University of Southern California, School of Pharmacy. She is currently employed by the board as an Inspector and her duties include: inspecting any facility or person licensed by the board, investigating complaints involving licensed premises or persons, investigating diversion of dangerous drugs, and monitoring licensed individuals or premises on probation. Dr. Sill has held this position for the past three years and has conducted over six hundred inspections during that time. Prior to her position as an Inspector for the board, Dr. Sill was employed as a Pharmacy Services Manager, a Clinical Pharmacist, and Staff Pharmacist at hospitals and other facilities. In addition to her current job as an Inspector, Dr. Sill currently works on a per diem basis as a Staff Pharmacist at a pharmacy and has done so since 2001.

10. Dr. Sills testified that the duties of a pharmacy technician include entering orders for prescriptions, pulling medications from the shelves and preparing them for use, packaging and labeling medications, and billing customers. The pharmacy technician is essentially an extension of the pharmacist. Licensed pharmacy technicians work under the supervision of a registered pharmacist and have open access to controlled substances, dangerous drugs and pharmaceutical devices. They also have access to confidential information contained in patient records and billing information. They must exercise good judgment and adhere to statutes and regulations regulating pharmacy operations. Pharmacy technicians who abuse substances are particularly dangerous to the public and to themselves because they have easy access to drugs and dangerous devices, and they may attempt to perform their job duties while they are impaired. While a pharmacist is required to supervise a pharmacy technician, it is practically impossible to oversee all activities of a pharmacy technician. Accordingly, pharmacy technicians must be trustworthy and reliable to perform their duties honestly, ethically and without mistakes.

11. Dr. Sills testified that there are currently only four Inspectors for the board on the probationary team, i.e., those that are responsible for monitoring probationers for compliance with the terms of their probation. Dr. Sills first became a member of the probationary team in March 2012. At that time respondent's file was transferred to her from another Inspector named Tina Thomas, who subsequently moved to a position with another state agency in August 2013.

12. Dr. Sills typically meets with probationers on a quarterly basis in order to monitor their compliance with their probationary terms. With regard to respondent, Dr. Sills has had no meetings with respondent because after respondent's file had been assigned to her and the quarterly report time period was due, the board was already in the process of initiating a petition to revoke respondent's probation. Dr. Sills has reviewed respondent's file with the board in this matter, including the investigative report prepared by the previous Inspector, Tina Thomas, and all correspondence contained therein.

13. Dr. Sills stated that according to the terms of respondent's probation, respondent was required to enroll in a drug screening program by October 3, 2011.

Respondent met that requirement and was properly enrolled in a drug screening program named FirstLab by that date. At the time of enrollment into the program, FirstLab provided respondent with instructions to call into (call-in) FirstLab every day to learn whether she was required to be tested that day.

*Correspondence between the Board and Respondent*

14. On September 12, 2011, the board sent a letter to respondent informing her she was required to complete enrollment for the required biological fluid testing pursuant to Condition 13 of her probation with FirstLab by October 3, 2011. The letter further stated: "Be sure to read the enrollment packet in its entirety. . . . follow the instructions within the enrollment packet for daily reporting." Respondent completed her enrollment with FirstLab by the October 3, 2011, date. The next day, on September 13, 2011, respondent signed the declaration stating that she met with the board regarding the terms of her probation and that she fully understood the terms and conditions.

15. On November 8, 2011, Inspector Tina Thomas sent a letter to respondent regarding respondent's failure to call-into FirstLab on five different dates (October 22, 2011; October 27-28, 2011; November 1, 2011; and November 5, 2011) and failure to submit to testing on three different dates (October 19, 2011, and October 27-28, 2011).

16. On November 15, 2011, respondent called Tina Thomas regarding her failure to call into FirstLab daily, her concern about her ability to pay for the random drug testing, and her request for information regarding the frequency of testing. Inspector Thomas informed respondent that she could not provide respondent with information regarding the frequency of testing as that would impede the purpose of making the testing random. Tina Thomas summarized the telephone conversation and entered it into respondent's file.

17. On February 21, 2012, the board sent another letter to respondent regarding respondent's failure to call into FirstLab on thirty-eight different days, and her failure to submit to testing as scheduled on twelve different days. The letter also advised respondent that she has failed to meet the first required payment toward the cost of investigation and enforcement pursuant to Condition 7, and that she failed to submit a community service program for approval pursuant to Condition 19. The letter informed respondent that she was in violation of probation. The dates that respondent failed to call into FirstLab were identified as follows:

October 11, 2011	November 13, 2011
October 22, 2011	November 20, 2011
October 27, 2011	November 10, 2011
October 28, 2011	December 23, 2011, to January 1, 2012
November 1, 2011	January 21, 2012
November 5, 2011	January 24, 2012, to February 9, 2012
November 9, 2011	

The dates that respondent failed to appear for scheduled bodily fluid testing were identified as follows:

October 19, 2011	December 23, 2011
October 27, 2011	December 27, 2011
October 28, 2011	December 30, 2011
November 3, 2011	January 5, 2012
November 10, 2011	January 9, 2012
December 1, 2011	February 1, 2012

18. On March 13, 2012, respondent called Inspector Thomas to complain that she had provided biological fluid for testing on March 12, 2012, and that she was again scheduled on March 13, 2012, to provide biological fluid for testing. Respondent complained that she had no more money to pay for the testing and stated that she would not submit to the testing on March 13, 2012. Inspector Thomas again informed respondent that her failure to provide biological fluid for testing would be a violation of respondent's probation. Inspector Turner summarized the telephone conversation and placed it in respondent's file.

19. A biological fluid test result from FirstLab taken on February 27, 2012, tested positive for alcohol. As a result, on March 19, 2012, the board sent respondent a letter informing her that her pharmacy technician license was suspended immediately pursuant to the terms of her probation. In the letter the board requested that respondent provide a letter of explanation for the positive test by March 26, 2012. On March 22, 2012, respondent faxed a letter to Inspector Thomas. In this letter respondent explained that she had a cough and cold symptoms she took over the counter cold medication that contained alcohol, and she had been using hand sanitizer that contains alcohol. Respondent provided copies of the packaging for the medication and hand sanitizer. On March 26, 2012, the board sent respondent a letter informing her that the suspension of her pharmacy technician license was lifted as a result of her explanation.

20. On April 6, 2012, and April 30, 2012, the board again sent letters to respondent regarding her failure to call-in to FirstLab for biological testing on February 19, 2012, March 4 and 24, 2012, and on April 24 and 29, 2012, as well as failure to provide biological fluids for testing as scheduled on April 24, 25 and 27, 2012. Both letters also noted that respondent failed to make payments as required pursuant to Condition 7 and she failed to provide a community service program for approval pursuant to Condition 19. Both letters informed respondent that she was in violation of her probation.

21. On May 17, 2012, the board again sent a letter to respondent advising of her failure to comply with the terms of her probation. In this letter the board advised respondent that she failed to call-in to FirstLab daily from April 30, 2012, to May 16, 2012, and she did not provide biological fluid for testing as scheduled on May 7 and 9, 2012. The letter further advised respondent that she remained in violation of Condition 7 for her failure to make payments toward the costs of investigation and prosecution, and she remained non-compliant

with Condition 19 for failure to submit a community service program to the board for approval. The letter concluded with a statement that her administrative case would be referred to the Attorney General for further disciplinary action.

### *Respondent's Testimony*

22. Respondent is thirty-two years old and has two children, ages fourteen and twelve. Respondent graduated from Alvord Continuation High School in 2000 and attended California Paramedical and Technical College in Riverside to become a pharmacy technician in 2003. She successfully tested for and received her pharmacy technician registration on January 7, 2004. Respondent has worked for the past ten years at a Vons grocery store, first as a courtesy clerk and after October 2004 as a pharmacy clerk. At some point she took a position as a pharmacy technician at Vons.

23. Respondent incurred her felony conviction for assault with a deadly weapon with the likelihood of great bodily injury on September 18, 2008. As a result, on October 21, 2008, respondent was sentenced to three years supervised probation, to serve sixty days in county jail, and she was required to participate in counseling and pay restitution in the amount of \$6,899.51. The circumstances that led to that conviction were that on December 29, 2007, respondent was involved in a fight with a woman on the dance floor of bar. Respondent hit the victim in the face with a glass bottle causing the victim to need stitches from cuts located above her left eyebrow, the left side of her nose and to her middle left finger. Respondent finished paying restitution to the victim in June 2014. Respondent successfully completed her probation for this conviction.

24. Respondent incurred her misdemeanor conviction for malicious disturbance on December 8, 2008, and she was placed on summary probation for three years with certain conditions, ordered to pay fines and fees and to serve six days in jail. The circumstances that led to that conviction were that on July 20, 2008, an investigator working in a plain clothes capacity for the California Department of Alcoholic Beverage Control (ABC) was patrolling a parking structure in Riverside, California located next to a licensed facility. The investigator observed respondent staggering and with bloodshot watery eyes and flushed face get into the driver's side door of a vehicle and start it. A second investigator then approached the vehicle and asked respondent to step out of the vehicle. The second investigator administered field sobriety tests to respondent, who failed those tests. Respondent was thereafter arrested for driving while intoxicated. Pursuant to a plea agreement, respondent pled guilty to misdemeanor malicious disturbance. Respondent testified that to the best of her knowledge she has not consumed any alcoholic beverages since the July 20, 2008, incident. Respondent successfully completed her probation for this conviction.

25. About one month after the board's decision placing her on probation, respondent took and passed the exam to obtain her Pharmacy Technician Certification from the state of California on October 5, 2011.

26. With regard to the payment of the cost of investigation and enforcement of \$250, respondent has only paid \$50.00 of that amount and admitted to failing to pay the remainder of her required payments. Respondent stated that the reason she did not make her payments toward the \$250 was because she had other financial obligations, including paying for the restitution fee to the victim from her felony conviction, attorney's fees, court fees and bail fees.

27. Respondent testified that despite having met with representatives of the board and executing the declaration on September 13, 2011, when she enrolled with FirstLab for her biological fluid testing, she did not understand that she needed to call-in every day for instructions whether or not she needed to come in on that day for biological fluid testing. Respondent testified that it was not until December 2011 or January 2012 that she finally understood that she must call-in daily. Respondent admitted to missing multiple call-in and testing requirements during her probation. Furthermore, respondent said that the cost of the testing became far too much for her to pay as of October 2011. She contacted Inspector Thomas to complain about the cost of the testing on multiple occasions.

28. Respondent testified that she spoke with Inspector Thomas at some point after she was placed probation and asked if she could satisfy her community service requirement by working at an animal shelter. Respondent was told by Tina Thomas that work at an animal shelter would not satisfy Condition 19, which requires respondent to perform "health-care related services." Respondent then applied to do volunteer work at a community hospital named Parkview. Respondent's application to work as a volunteer at that facility was rejected because she had a felony conviction. Respondent testified that after receiving that rejection, she simply gave up on trying to find a community service project that would satisfy Condition 19. Respondent never asked Tina Thomas or any other board representative if the board could recommend any other community service projects that would satisfy Condition 19.

29. Despite her admissions of failing to meet the requirements of Conditions 7, 16, and 19, respondent would like to keep her pharmacy technician license in order to keep her current job.

## LEGAL CONCLUSIONS

1. When a licensee is on probation and the agency has filed a petition to revoke probation, the burden of proof is on the agency. The standard of proof required to establish the allegations in the petition is "preponderance of evidence." (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1441.)

2. Business and Professions Code section 4300, subdivision (a), provides that "[e]very license may be suspended or revoked."



3. Business and Professions Code section 4300.1 provides that the expiration, cancellation, forfeiture, or suspension of a board-issued license does not deprive the board of jurisdiction to proceed with disciplinary action against the licensee or to render a decision suspending or revoking the license.

*Cause Exists to Revoke Probation*

4. Respondent violated Condition 16 of her probation when she failed to call in on multiple occasions and submit to biological fluid testing. Her assertion that she didn't understand that she was required to call in daily is not credible. As early as November 8, 2011, the board sent multiple letters to respondent informing her that her failure to call-in daily and to provide biological fluid samples when scheduled was a violation of her probation. Yet despite these letters, respondent continued to fail to call-in daily and to report for biological testing when scheduled. Respondent's failure to call-in on a daily basis and failure to appear for drug testing when scheduled constitutes a violation of her probation. She claimed that she simply did not understand that she needed to call-in daily, but the evidence suggests that she was informed of this requirement prior to and at the time of her enrollment.

5. Respondent violated Condition 7 of her probation when she failed to pay the costs of investigation and prosecution in the amount of \$250 through quarterly payments. Condition 7 specifically stated that "[t]here shall be no deviation from any payment schedule absent prior written approval by the board" and that "[f]ailure to pay such costs by that deadline as directed shall be considered a violation of probation." Despite the clear language of Condition 7, respondent failed to pay the costs in the time required on the asserted basis that she had other more important expenses. Respondent's failure to pay the costs on a quarterly basis is a violation of probation.

6. Respondent violated Condition 19 when she failed to her to submit to the board for its prior approval a community service program "in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 100 hours for the entire term of probation." Respondent ignored this Condition. Although her attempt to volunteer at community hospital was rejected by the hospital, respondent made no other effort to comply with this Condition and testified that she simply "gave up." Respondent's failure to submit for approval a community service program to the board is a violation of probation.

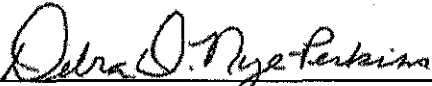
7. The primary purpose of the board's licensing and regulatory authority is to protect the public. Whenever protection of the public is inconsistent with other interests sought to be promoted, "the protection of the public shall be paramount." (Bus. & Prof. Code, § 4001.1.) The board is obligated to ensure that an individual holding a pharmacy technician license is authorized and qualified to hold the license. Respondent's heartfelt desire to retain her license and keep her current employment is understandable but does not take priority over public protection. Respondent has not taken the steps necessary to retain her license. She had several opportunities to comply with the terms of her probation and was

given multiple warnings regarding her lack of compliance. Respondent's financial hardship related to the cost of drug testing and payment of the cost of enforcement and prosecution is an insufficient reason to allow her to ignore the requirements of her probation to which she voluntarily agreed at the time of settlement with the board. It is not in the public's interest to require the board to wait indefinitely for her to comply with those terms. In light of the totality of the evidence, the only appropriate measure of discipline is to set aside the stay of the revocation that was issued on August 16, 2011, and to revoke respondent's pharmacy technician registration.

### ORDER

The August 16, 2011, stay of the revocation of Marlene Ramona Ramirez's pharmacy technician registration number TCH 52404 is vacated. Marlene Ramona Ramirez's pharmacy technician registration is hereby revoked.

DATED: December 2, 2014

  
\_\_\_\_\_  
DEBRA D. NYE-PERKINS  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 KAREN L. GORDON  
Deputy Attorney General  
4 State Bar No. 137969  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2073  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Petition to Revoke  
12 Probation Against:

Case No. 4517

13 **MARLENE RAMONA RAMIREZ**  
14 **4334 Santee Place**  
**Riverside, CA 92504**

PETITION TO REVOKE PROBATION

15 **Pharmacy Technician Registration**  
16 **No. TCH 52404**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her  
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
23 Affairs.

24 2. On or about January 7, 2004, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 52404 to Marlene Ramona Ramirez (Respondent). The Pharmacy  
26 Technician Registration was in effect at all times relevant to the charges brought herein and will  
27 expire on January 31, 2014, unless renewed.

28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE TO REVOKE PROBATION**

**(Failure to Submit Cost Recovery Payments)**

8. At all times after the effective date of the Decision and Order imposing probation on Respondent's license, Term and Condition 7 states in pertinent part:

7. **Reimbursement of Board Costs.** As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$250.00. A quarterly payment schedule may be approved by the Board. There shall be no deviation from any payment schedule absent prior written approval by the board and its designee. Failure to pay such costs by that deadline(s) as directed shall be considered a violation of probation.

9. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 7, referenced above. Respondent failed to reimburse the Board for its costs of investigation and prosecution in the amount of \$200.00.

**SECOND CAUSE TO REVOKE PROBATION**

**(Failure to Submit to Random Drug Screening)**

10. At all times after the effective date of the Decision and Order imposing probation on Respondent's license, Term and Condition 16 states in pertinent part:

16. **Random Drug Screening.** Respondent, at her own expense, shall participate in random drug testing, including, but not limited to, biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation and the frequency of testing will be determined by the board or its designee. At all times, Respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tested samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation.

11. Respondent's probation is subject to revocation because she failed to comply with Term and Condition 16 of her probation. Respondent has only reported for drug screening sporadically since October 11, 2011, and has missed all scheduled drug testing since April 24, 2012.

///  
///  
///  
///

1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Failure to Establish a Community Service Program)**

3 12. At all times after the effective date of the Decision and Order imposing probation on  
4 Respondent's license, Term and Condition 19 states:

5 **19. Community Services Program.** Within sixty (60) days of the  
6 effective date of this decision, Respondent shall submit to the board, for its prior  
7 approval, a community service program in which respondent shall provide free  
8 health-care related services on a regular basis to a community or charitable facility or  
9 agency for at least 100 hours for the entire term of probation. Within 30 days of board  
10 approval thereof, respondent shall submit documentation to the board, demonstrating  
11 commencement of the community service program. The record of this notification  
12 must be provided to the board upon request. Respondent shall report on progress with  
13 the community service program in the quarterly reports. Failure to timely submit,  
14 commerce, or comply with the program should be considered a violation of probation.

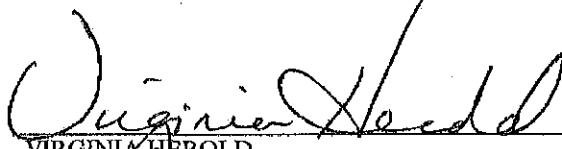
15 13. Respondent's probation is subject to revocation because she failed to comply with  
16 Probation Condition 19 of her probation. Respondent has not submitted the name of the  
17 community service program for approval by the Board.

18 **PRAYER**

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

- 21 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3612  
22 and imposing the disciplinary Order that was stayed, thereby revoking Pharmacy Technician  
23 Registration No. TCH 52404 issued to Marlene Ramona Ramirez (Respondent);  
24 2. Revoking or suspending Pharmacy Technician Registration No. TCH 52404 issued to  
25 Marlene Ramona Ramirez;  
26 3. Taking such other and further action as deemed necessary and proper.

27 DATED: 7/18/13



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

28 SD2012704646  
80764078.doc

**Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 3612**

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

In the Matter of the Accusation Against:

Case No. 3612

**MARLENE RAMONA RAMIREZ**

8651 Camelia Drive  
Riverside, CA 92504

Pharmacy Technician Registration No. TCH  
52404

Respondent.

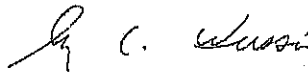
**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary and 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 September 15, 2011.

It is so ORDERED August 16, 2011.

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 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 KAREN L. GORDON  
Deputy Attorney General  
4 State Bar No. 137969  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2073  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3612

12 **MARLENE RAMONA RAMIREZ**  
13 **8651 Camelia Drive**  
14 **Riverside, CA 92504**

OAH No. 2010100122

15 **Pharmacy Technician Registration**  
16 **No. TCH 52404**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17 Respondent.

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

22 **PARTIES**

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



1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 3612.

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

7 CONTINGENCY

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

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

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

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

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 52404 issued  
3 to Respondent Marlene Ramona Ramirez is revoked. However, the revocation is stayed and  
4 Respondent is placed on probation for three (3) years on the following terms and conditions.

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

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

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

20 Subject to the above restrictions, Respondent may continue to own or hold an interest in  
21 any licensed premises by the board in which she holds an interest at the time this decision  
22 becomes 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

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

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

12      **3. Report to the Board**

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

21      **4. Interview with the Board**

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

27      ///  
28

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 3612 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 3612 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 3612 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  
23 employment service, Respondent shall cause her direct supervisor with the pharmacy  
24 employment service to report to the board in writing acknowledging that she has read the decision  
25 in case number 3612 and the terms and conditions imposed thereby. It shall be Respondent's  
26 responsibility to ensure that her employer(s) and/or supervisor(s) submit timely  
27 acknowledgment(s) to the board.

28           ///

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

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

9 **7. Reimbursement of Board Costs**

10 As a condition precedent to successful completion of probation, Respondent shall pay to the  
11 board its costs of investigation and prosecution in the amount \$250.00. A quarterly payment  
12 schedule may be approved by the Board. There shall be no deviation from any payment schedule  
13 absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s)  
14 as directed shall be considered a violation of probation.

15 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility  
16 to reimburse the board its costs of investigation and prosecution.

17 **8. Probation Monitoring Costs**

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

22 **9. Status of License**

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

26 ///

27 ///

28

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

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

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

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

20 **11. Notification of a Change in Name, Residence Address, Mailing Address or**  
21 **Employment**

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

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



1           **12. Tolling of Probation**

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

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

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

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

22           **13. Violation of Probation**

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

28           ///

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           **14. 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           **15. 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           **16. Random Drug Screening**

20           Respondent, at her own expense, shall participate in random testing, including but not  
21 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
22 screening program as directed by the board or its designee. Respondent may be required to  
23 participate in testing for the entire probation period and the frequency of testing will be  
24 determined by the board or its designee. At all times, Respondent shall fully cooperate with the  
25 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
26 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
27 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
28 of probation. Upon request of the board or its designee, Respondent shall provide documentation

1 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
2 a necessary part of the treatment of the Respondent. Failure to timely provide such  
3 documentation shall be considered a violation of probation. Any confirmed positive test for  
4 alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented  
5 medical treatment shall be considered a violation of probation and shall result in the automatic  
6 suspension of work by respondent. Respondent may not resume work as a pharmacy technician  
7 until notified by the board in writing.

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

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

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

21 **17. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

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

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

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

13           **19. Community Services Program**


14           Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
15 board or its designee, for prior approval, a community service program in which Respondent shall  
16 provide free health-care related services on a regular basis to a community or charitable facility or  
17 agency for at least 100 hours for the entire term of probation. Within thirty (30) days of board  
18 approval thereof, Respondent shall submit documentation to the board demonstrating  
19 commencement of the community service program. A record of this notification must be  
20 provided to the board upon request. Respondent shall report on progress with the community  
21 service program in the quarterly reports. Failure to timely submit, commence, or comply with the  
22 program shall be considered a violation of probation.

23           ///  
24           ///  
25           ///  
26           ///  
27           ///  
28           ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ACCEPTANCE

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

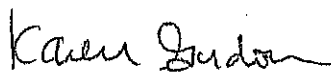
DATED: 5/16/11   
MARLENE RAMONA RAMIREZ  
Respondent

ENDORSEMENT

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

Dated: April 5, 2011

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General

  
KAREN L. GORDON  
Deputy Attorney General  
*Attorneys for Complainant*

SD2010800200  
80485189.doc

Exhibit A

Accusation No. 3612

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
4 State Bar No. 101336  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-3037  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3612

12 **MARLENE RAMONA RAMIREZ**  
13 8651 Camelia Drive  
14 Riverside, CA 96049

**A C C U S A T I O N**

15 Pharmacy Technician Registration  
No. TCH 52404

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 7, 2004, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 52404 to Marlene Ramona Ramirez (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on January 31, 2012, unless renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

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

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

9 5. Section 4300 of the Code states:

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

11 STATUTORY PROVISIONS

12 6. Section 480 of the Code states:

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

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

21 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
22 benefit himself or herself or another, or substantially injure another.

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

25 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
26 substantially related to the qualifications, functions, or duties of the business or profession for  
27 which application is made.

28



1           “(b) Notwithstanding any other provision of this code, no person shall be denied a license  
2 solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
3 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
4 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
5 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
6 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
7 Section 482.

8           “(c) A board may deny a license regulated by this code on the ground that the applicant  
9 knowingly made a false statement of fact required to be revealed in the application for the  
10 license.”

11           7. Section 482 of the Code states:

12           “Each board under the provisions of this code shall develop criteria to evaluate the  
13 rehabilitation of a person when:

14                   “(a) Considering the denial of a license by the board under Section 480; or

15                   “(b) Considering suspension or revocation of a license under Section 490.

16           “Each board shall take into account all competent evidence of rehabilitation furnished by  
17 the applicant or licensee.”

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

22           9. Section 493 of the Code states:

23           “Notwithstanding any other provision of law, in a proceeding conducted by a board within  
24 the department pursuant to law to deny an application for a license or to suspend or revoke a  
25 license or otherwise take disciplinary action against a person who holds a license, upon the  
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

1 and the board may inquire into the circumstances surrounding the commission of the crime in  
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
5 'registration.'"

6 10. Section 4301 of the Code states:

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

10 " . . .

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

14 " . . .

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

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

4 "....

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

#### 6 REGULATORY PROVISIONS

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

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

14 12. California Code of Regulations, title 16, section 1769, states:

15 "....

16 "(b) When considering the suspension or revocation of a facility or a personal license on the  
17 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating  
18 the rehabilitation of such person and his present eligibility for a license will consider the  
19 following criteria:

20 "(1) Nature and severity of the act(s) or offense(s).

21 "(2) Total criminal record.

22 "(3) The time that has elapsed since commission of the act(s) or offense(s).

23 "(4) Whether the licensee has complied with all terms of parole, probation, restitution or  
24 any other sanctions lawfully imposed against the licensee.

25 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

#### 26 COST RECOVERY

27 Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (December 8, 2008, Conviction for Malicious Disturbance on July 20, 2008)

5 13. Respondent is subject to disciplinary action under sections 490 and 4301,  
6 subdivision (1) of the Codes in that she was convicted of a crime substantially related to the  
7 qualifications, duties, and functions as a pharmacy technician. The circumstances are as follows:

8 a. On September 11, 2008, in Riverside County Superior Court, case number  
9 RIM519395, Respondent was charged with Count 1, a misdemeanor violation of Vehicle Code  
10 section 664-23152, subdivision (a), attempted driving under the influence of a drug or alcohol,  
11 and Count 2, a misdemeanor violation of Vehicle Code section 664-23152, subdivision (b),  
12 attempted DUI, Alcohol/0.08 percent. On December 8, 2008, the complaint was amended to add  
13 Count 3, a misdemeanor violation of Penal Code section 415, subdivision (2), malicious  
14 disturbance. On December 8, 2008, Respondent pled guilty to Count 3 and was granted three  
15 years of summary probation, sentenced to serve 6 days in the county jail with credit of 1 day for  
16 time served, and to pay a fine of \$1763.40. Counts 1 and 2 were dismissed.

17 b. The facts that led to the conviction are that on July 20, 2008, an investigator working  
18 in plain clothes capacity for the California Department of Alcoholic Beverage Control (ABC) was  
19 patrolling a parking lot/structure located at 3737 Main Street, Riverside, California. This parking  
20 structure is known for minor drinking and drug use and is used by patrons of an ABC licensed  
21 premises known as Trilussa. The investigator observed two females walking in the parking  
22 structure talking and laughing loudly. They were standing in front of cars that were attempting to  
23 leave. They also argued with a male in the structure. The investigator observed that they were  
24 swaying and staggering as they walked. The investigator also observed that one female, later  
25 identified as Respondent, had blood shot watery eyes and a flushed face. Respondent was  
26 observed getting into the driver's side of a vehicle and starting it. A second investigator then  
27 approached the vehicle and had Respondent turn off the engine and exit the vehicle. The  
28 investigator requested that Respondent perform field sobriety tests (FST's). Respondent failed to

1 perform the tests as demonstrated. Based on failing the FST's, the objective signs and symptoms  
2 of intoxication, Respondent was arrested by the Riverside Sheriff's Department for violation of  
3 Vehicle Code section 23152, subdivision (a), DUI. Respondent was transported and booked into  
4 custody at Robert Presley Detention Center (Riverside County Jail).

5 SECOND CAUSE FOR DISCIPLINE

6 (September 18, 2008, Conviction for Assault With Deadly Weapon on December 29, 2007)

7 14. Respondent is subject to disciplinary action under Code sections 490 and 4301,  
8 subdivision (1) in that she was convicted of a crime that is substantially related to the  
9 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

10 a. On December 31, 2007, in San Bernardino County Superior Court case number  
11 FCH7000638, Respondent was charged with Count 1, a felony violation of Penal Code section  
12 245, subdivision (a)(1), assault with deadly weapon with a special allegation of personally  
13 inflicting great bodily injury. On September 18, 2008, the complaint was amended to add  
14 Count 2, a felony violation of Penal Code section 245, subdivision (a)(1), assault with deadly  
15 weapon: great bodily injury likely. On September 18, 2008, Respondent pled nolo contendere to  
16 Count 2 and Count 1 was dismissed. On October 21, 2008, Respondent was granted three years  
17 of supervised probation, sentenced to serve 60 days in county jail with credit for 6 days served,  
18 required to participate in a counseling program, and pay restitution of \$6,899.51.

19 b. The facts that led to the conviction are that on December 29, 2007, an officer with the  
20 Chino Police Department responded to a bar on a report of a fight between two females. Upon  
21 arrival, the officer identified a female subject, the victim, whose face was bleeding. The victim  
22 stated she was dancing when someone hit her with an unknown object, but did not know who hit  
23 her. One witness reported that she saw Respondent hit the victim in a face with a bottle.  
24 Respondent stated that a female had pushed her on the dance floor and she defended herself by  
25 fighting back and taking the female to the ground. The victim was taken to a hospital. The  
26 officer spoke with the doctor who treated the victim, who stated the victim had a cut above her  
27 left eyebrow that required three stitches, a cut on the upper left side of her nose that required three  
28 stitches, and a cut to her middle left finger which required four stitches. The doctor believed the

1 middle finger cut was consistent with that of a glass-type cut or that her finger could have  
2 possibly been cut by glass.

3 THIRD CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct – Moral Turpitude)

5 15. Respondent is subject to disciplinary action for unprofessional conduct under Code  
6 section 4301, subdivision (f), in that Respondent's assault with a deadly weapon constitutes moral  
7 turpitude, as is detailed in paragraph 14, above.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Conduct That Would Have Warranted Denial of a License)

10 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (p)  
11 in that on December 29, 2007, and July 20, 2008, Respondent violated Penal Code sections 415,  
12 subdivision (2), malicious disturbance, and 245, subdivision (a)(1), assault with a deadly weapon,  
13 great bodily injury likely. Such egregious conduct would have warranted the denial of a  
14 pharmacy technician registration under Code section 480, subdivisions (a)(1) and (a)(2).

15 PRAYER

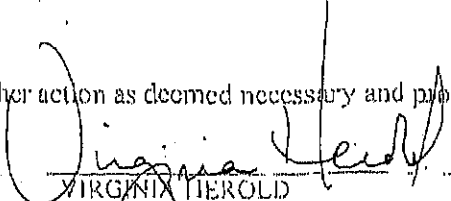
16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
17 and that following the hearing, the Board of Pharmacy issue a decision:

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 52404,  
19 issued to Marlene Ramona Ramirez;

20 2. Ordering Marlene Ramona Ramirez to pay the Board of Pharmacy the reasonable  
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
22 Code section 125.3;

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

24 DATED: 5/6/10

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

SD2010800200  
80452933.doc