

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

In the Matter of the Accusation Against:

Case No. 4731

**MIKE ANTHONY GUTIERREZ JR.**  
1620 49<sup>TH</sup> Street  
San Diego, CA 92102

Pharmacy Technician Registration  
No. TCH 67717

Respondent.

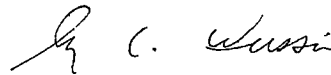
**DECISION AND ORDER**

The attached Stipulated Surrender of License 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 April 22, 2014.

It is so ORDERED on April 17, 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 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
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*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:  
13 **MIKE ANTHONY GUTIERREZ**  
14 **6776 Hibiscus Drive**  
**Lemon Grove, CA 91945**  
15 **Pharmacy Technician Registration**  
16 **No. TCH 67717**  
17 Respondent.

Case No. 4731

OAH No. 2013110515

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

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

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
23 She brought this action solely in her official capacity and is represented in this matter by Kamala  
24 D. Harris, Attorney General of the State of California, by Amanda Dodds, Senior Legal Analyst.
- 25 2. Mike Anthony Gutierrez (Respondent) is representing himself in this proceeding and  
26 has chosen not to exercise his right to be represented by counsel.
- 27 3. On or about February 21, 2006, the Board of Pharmacy issued Pharmacy Technician  
28 Registration No. TCH 67717 to Mike Anthony Gutierrez (Respondent). The Pharmacy

1 Technician Registration was in full force and effect at all times relevant to the charges brought in  
2 Accusation No. 4731 and will expire on June 30, 2015, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 4731 was filed before the Board of Pharmacy (Board), Department of  
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
6 statutorily required documents were properly served on Respondent on November 4, 2013.  
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation  
8 No. 4731 is attached as Exhibit A and incorporated by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in  
11 Accusation No. 4731. Respondent also has carefully read, and understands the effects of this  
12 Stipulated Surrender of License and Order.

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

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

22 **CULPABILITY**

23 8. Respondent admits the truth of each and every charge and allegation in Accusation  
24 No. 4731, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician  
25 Registration No. TCH 67717 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue  
27 an order accepting the surrender of his Pharmacy Technician Registration without further process.

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1 **CONTINGENCY**

2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
4 communicate directly with the Board regarding this stipulation and surrender, without notice to or  
5 participation by Respondent. By signing the stipulation, Respondent understands and agrees that  
6 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
8 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
10 be disqualified from further action by having considered this matter.

11 11. The parties understand and agree that Portable Document Format (PDF) and facsimile  
12 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures  
13 thereto, shall have the same force and effect as the originals.

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

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

22 **ORDER**

23 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 67717, issued  
24 to Respondent Mike Anthony Gutierrez, is surrendered and accepted by the Board of Pharmacy.

25 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance  
26 of the surrendered license by the Board shall constitute the imposition of discipline against  
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
28 Respondent's license history with the Board of Pharmacy.

1 2. Respondent shall lose all rights and privileges as a pharmacy technician in California  
2 as of the effective date of the Board's Decision and Order.

3 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
4 issued, his wall certificate on or before the effective date of the Decision and Order.

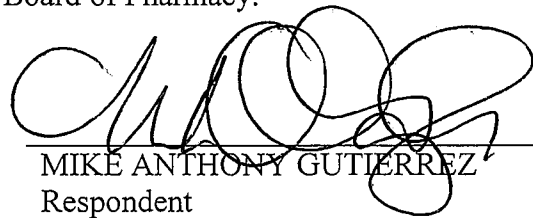
5 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
6 the State of California, the board shall treat it as a new application for licensure. Respondent may  
7 not apply for any license, permit, or registration from the Board for three (3) years from the  
8 effective date of this decision. If Respondent applies for any license from the Board on or after  
9 the effective date of this decision, all allegations set forth in Accusation No. 4731 shall be  
10 deemed to be true, correct and admitted by Respondent when the Board determines whether to  
11 grant or deny the application. Respondent shall satisfy all requirements applicable to that license  
12 as of the date the application is submitted to the Board, including, but not limited to certification  
13 by a nationally recognized body prior to the issuance of a new license. Respondent is required to  
14 report this surrender as disciplinary action.

15 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
16 amount of \$2,836.00 prior to issuance of a new or reinstated license.

17 **ACCEPTANCE**

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

22  
23 DATED: 3/11/14

  
MIKE ANTHONY GUTIERREZ  
Respondent

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**ENDORSEMENT**

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

Dated: 3/18/14

Respectfully submitted,

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

  
AMANDA DODDS  
Senior Legal Analyst  
*Attorneys for Complainant*

SD2013705498

**Exhibit A**

**Accusation No. 4731**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
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6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4731

13 **MIKE ANTHONY GUTIERREZ JR.**  
14 **1620 49th Street**  
**San Diego, CA 92102**

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 67717**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about February 21, 2006, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 67717 to Mike Anthony Gutierrez Jr., also known as Michael Anthony  
25 Gutierrez (Respondent). The Pharmacy Technician Registration was in full force and effect at all  
26 times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

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## JURISDICTION

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

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

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## STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

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

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

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

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

8. Section 493 of the Code states:

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

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to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

9. Section 4301 of the Code states:

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

....

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

....

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

....

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

....

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

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10. Section 4022 of the Code states

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

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

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

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

11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

12. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

13. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally –

.....

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

.....

**REGULATORY PROVISIONS**

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

.....

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

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

(2) Total criminal record.

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

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

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

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

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

**COSTS**

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

**DRUG**

17. Hydrocodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(I), and is a dangerous drug pursuant to Business and Professions Code section 4022.

**FIRST CAUSE FOR DISCIPLINE**

**(February 2, 2012 Criminal Convictions for Possession of a Controlled Substance & Burglary)**

18. Respondent has subjected his registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about February 2, 2012, in a criminal proceeding entitled *People of the State of California v. Michael Anthony Gutierrez*, in San Diego County Superior Court, case number CD238397, Respondent was convicted on his plea of guilty to violating Health and

1 Safety Code section 11350, subdivision (a), possession of a controlled substance, to wit,  
2 hydrocodone, a misdemeanor; and Penal Code section 459, second degree burglary, a felony.  
3 Pursuant to Respondent's plea agreement, the court dismissed an additional count of petty theft  
4 (Pen. Code, § 484).

5 b. As a result of the convictions, on or about February 2, 2012, Respondent was  
6 granted three years probation to the court, and sentenced to serve four days in jail, with credit for  
7 four days. Respondent was further ordered to complete 15 days of community service, pay fees,  
8 fines, and restitution, submit to a Fourth Amendment waiver, and to comply with probation terms.

9 c. The facts that led to the convictions are that on or about December 27, 2011, a  
10 CVS Pharmacy Loss Prevention Manager contacted the Drug Enforcement Administration's San  
11 Diego Field Division's Tactical Diversion Squad (TDS) to report that one of their pharmacy  
12 technicians (Respondent) was seen on video surveillance stealing one bottle of hydrocodone  
13 10/660 mg from their pharmacy during his scheduled shift on December 21, 2011. The Loss  
14 Prevention Manager provided seven photographs depicting Respondent selecting a bottle of  
15 hydrocodone off the shelf and concealing it inside his pants. On January 4, 2012, agents from the  
16 TDS met with the Loss Prevention Manager to review the video surveillance footage, and  
17 arrangements were made to allow the Loss Prevention Manager to obtain a statement from  
18 Respondent. In Respondent's written statement, he admitted that for the past year, he had stolen  
19 full stock bottles and individual tablets of hydrocodone 10/600 and hydrocodone 5/325 for his  
20 personal use. Respondent signed a promissory note in the amount of \$351.47. The TDS agents  
21 arrived and placed Respondent under arrest. Respondent discussed his written statement with the  
22 TDS agents and confirmed the thefts.

### 23 SECOND CAUSE FOR DISCIPLINE

#### 24 (Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)

25 19. Respondent has subjected his registration to discipline under section 4301,  
26 subdivision (f) of the Code for unprofessional conduct in that on or between December 2010 and  
27 December 2011, Respondent stole controlled substances and dangerous drugs from his  
28 employer/pharmacy using fraud, deceit, and dishonesty, as described in paragraph 18, above.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of California Statutes Regulating Controlled Substances)**

3 20. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the  
4 Code for unprofessional conduct in that on or between December 2010 and December 2012,  
5 Respondent knowingly violated Business and Professions Code sections 4022, 4059, and 4060, as  
6 described in paragraph 18, above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

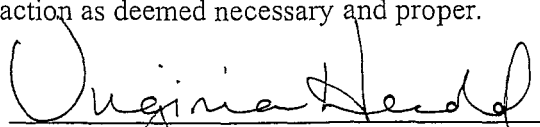
9 21. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
10 Code for unprofessional conduct in that on or between December 2010 and December 2012,  
11 Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of Pharmacy  
12 Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California  
13 Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), when he obtained  
14 controlled substances using fraud and deceit, as described in paragraph 18, 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. Revoking or suspending Pharmacy Technician Registration Number TCH 67717,  
19 issued to Mike Anthony Gutierrez Jr.;
- 20 2. Ordering Mike Anthony Gutierrez Jr. 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: 10/21/13

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

SD2013705498