

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

In the Matter of the Statement of Issues Against:

Case No. 4426

MICHAEL JOE MATTIA

7860 El Paso Street
La Mesa, CA 91942

Application for Pharmacy Technician
Registration

Respondent.

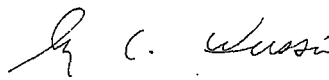
DECISION AND ORDER

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

This decision shall become effective on December 20, 2013.

It is so ORDERED on December 13, 2013.

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 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 Statement of Issues
12 Against:

13 **MICHAEL JOE MATTIA**
14 **7860 El Paso Street**
La Mesa, CA 91942

15 **Pharmacy Technician Registration**

16 Respondent.

Case No. 4426

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

24 PARTIES

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

1 2. Michael Joe Mattia (Respondent) is represented in this proceeding by attorney
2 Richard Lee Katzman, whose address is: 7676 Hazard Center Drive, Fifth Floor,
3 San Diego, California 92108.

4 3. On or about February 16, 2012, Respondent filed an application dated December 13,
5 2011, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

6 JURISDICTION

7 4. Statement of Issues No. 4426 was filed before the Board of Pharmacy (Board),
8 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of
9 Issues and all other statutorily required documents were properly served on Respondent on
10 January 25, 2013. A copy of Statement of Issues No. 4426 is attached as Exhibit A and
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Statement of Issues No. 4426. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

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

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

25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in Statement of
27 Issues No. 4426.

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacy Technician Registration will be issued to
3 Respondent Michael Joe Mattia and immediately revoked. The revocation will be stayed and the
4 Respondent placed on five (5) years probation on the following terms and conditions.

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

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

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

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

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

24 **2. Obey All Laws**

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

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

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- 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 to
- 9 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.

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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 his
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 4426 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 his 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 4426 and the terms and conditions
14 imposed thereby. It shall be respondent's responsibility to ensure that his 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 his direct supervisor, pharmacist-in-charge and owner at every pharmacy
18 of the terms and conditions of the decision in case number 4426 in advance of the respondent
19 commencing work at each pharmacy. A record of this notification must be provided to the board
20 upon request.

21 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
22 (15) days of respondent undertaking any new employment by or through a pharmacy employment
23 service, respondent shall cause his direct supervisor with the pharmacy employment service to
24 report to the board in writing acknowledging that he has read the decision in case number 4426
25 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
26 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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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. Probation Monitoring Costs**

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

14 **8. Status of License**

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

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

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

23 Following the effective date of this decision, should respondent cease work due to
24 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
25 respondent may tender his pharmacy technician license to the board for surrender. The board or
26 its designee shall have the discretion whether to grant the request for surrender or take any other
27 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
28 license, respondent will no longer be subject to the terms and conditions of probation. This

1 surrender constitutes a record of discipline and shall become a part of the respondent's license
2 history with the board.

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

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

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

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

18 **11. Tolling of Probation**

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

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

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

6 "Cessation of work" means calendar month during which respondent is not
7 working for at least _____ hours as a pharmacy technician, as defined in Business
8 and Professions Code section 4115. "Resumption of work" means any calendar
9 month during which respondent is working as a pharmacy technician for at least
10 _____ hours as a pharmacy technician as defined by Business and Professions
11 Code section 4115.

12 **12. Violation of Probation**

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

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

25 **13. Completion of Probation**

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

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

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

9 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
10 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
11 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
12 has any legal or beneficial interest in, or serve as a manager, administrator, member, officer,
13 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
14 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
15 that interest, but only to the extent of that position or interest as of the effective of this decision.
16 Violation of this restriction shall be considered a violation of probation.

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

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

26 **16. Random Drug Screening**

27 Respondent, at his own expense, shall participate in random testing, including but not
28 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug

1 screening program as directed by the board or its designee. Respondent may be required to
2 participate in testing for the entire probation period and the frequency of testing will be
3 determined by the board or its designee. At all times respondent shall fully cooperate with the
4 board or its designee, and shall, when directed, submit to such tests and samples for the detection
5 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
6 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
7 of probation. Upon request of the board or its designee, respondent shall provide documentation
8 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
9 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
10 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
11 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
12 shall be considered a violation of probation and shall result in the automatic suspension of work
13 by respondent. Respondent may not resume work as a pharmacy technician until notified by the
14 board in writing.

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

23 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
24 Subject to the above restrictions, respondent may continue to own or hold an interest in any
25 licensed premises in which he holds an interest at the time this decision becomes effective unless
26 otherwise specified in this order.

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

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1 **17. Work Site Monitor**

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

12 **18. Notification of Departure**

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

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

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

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

2 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
3 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
4 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
5 history [with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental
6 illness, and/or of gambling-addiction] and who will coordinate and monitor any prescriptions for
7 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
8 practitioner shall be provided with a copy of the board's [accusation or petition to revoke
9 probation] and decision. A record of this notification must be provided to the board upon request.
10 Respondent shall sign a release authorizing the practitioner to communicate with the board about
11 respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or
12 psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding
13 respondent's compliance with this condition. If any substances considered addictive have been
14 prescribed, the report shall identify a program for the time limited use of any such substances.
15 The board may require that the single coordinating physician, nurse practitioner, physician
16 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
17 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,
18 respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment,
19 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist
20 of respondent's choice to the board or its designee for its prior approval. Failure to timely submit
21 the selected practitioner or replacement practitioner to the board for approval, or to ensure the
22 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

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

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

14
15 ACCEPTANCE

16 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
17 discussed it with my attorney, Richard Lee Katzman. I understand the stipulation and the effect it
18 will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and
19 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
20 Decision and Order of the Board of Pharmacy.

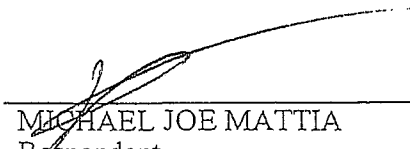
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DATED:

10/12/13

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MICHAEL JOE MATTIA
Respondent

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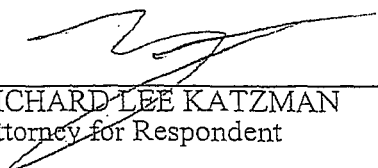
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APPROVAL

I have read and fully discussed with Respondent Michael Joe Mattia the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

I approve its form and content.

DATED: 4/23/13



RICHARD LEE KATZMAN
Attorney for 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: 10-16-13

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

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Exhibit A

Statement of Issues No. 4426

1 KAMALA D. HARRIS
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 Statement of Issues Against:

Case No. 4426

12 **MICHAEL JOE MATTIA**

STATEMENT OF ISSUES

13 Pharmacy Technician Applicant

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about February 16, 2012, the Board of Pharmacy, Department of Consumer
21 Affairs, received an application for a Pharmacy Technician Registration from Michael Joe Mattia
22 (Respondent). On or about December 13, 2011, Michael Joe Mattia certified under penalty of
23 perjury to the truthfulness of all statements, answers, and representations in the application. The
24 Board denied the application on June 8, 2012.

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JURISDICTION

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

4. Section 4300, subdivision (c) of the Code states "The board may refuse a license to any applicant guilty of unprofessional conduct."

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

....

6. Section 480 of the Code states:

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

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

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

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

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

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7. 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.

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 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:

.....

(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

1 suspending the imposition of sentence, irrespective of a subsequent order under
2 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
3 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
4 dismissing the accusation, information, or indictment.

4

5 REGULATORY PROVISIONS

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

7 (a) When considering the denial of a facility or personal license under Section
8 480 of the Business, and Professions Code, the board, in evaluating the rehabilitation
9 of the applicant and his present eligibility for licensing or registration, will consider
10 the following criteria:

11 (1) The nature and severity of the act(s) or offense(s) under consideration as
12 grounds for denial.

13 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
14 consideration as grounds for denial under Section 480 of the Business and Professions
15 Code.

16 (3) The time that has elapsed since commission of the act(s) or crime(s) referred
17 to in subdivision (1) or (2).

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

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

21

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

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

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (March 8, 2005 Criminal Conviction for Possession of Drug Paraphernalia
3 on December 16, 2004)

4 12. Respondent's application for registration as a pharmacy technician is subject to denial
5 under section 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime
6 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.
7 The circumstances are as follows:

8 13. On or about March 8, 2005, in a criminal proceeding entitled *State of Arizona v.*
9 *Michael Joe Mattia*, in the Superior Court of Arizona, County of Yuma, Case Number
10 S1400CR200500165, Respondent was convicted on his plea of guilty to violating Arizona
11 Revised Statutes section 13-3415(A) (possession of drug paraphernalia), a class six felony.

12 14. As a result of the conviction, the Court placed Respondent on two years supervised
13 probation and ordered that Respondent pay various fees and fines, not consume alcoholic
14 beverages, and participate and cooperate in any counseling or assistance as directed by the
15 Arizona Probation Department.

16 15. The circumstances surrounding the conviction are that on December 16, 2004, Yuma
17 County Sheriff's Deputies were dispatched to the Border Patrol checkpoint located at milepost 17
18 of eastbound Interstate 8 in reference to a drug offense. Upon arrival, deputies learned that a law
19 enforcement canine alerted to Respondent's vehicle and Respondent was sent to a secondary
20 inspection area where Respondent admitted to being in possession of a handgun. The canine did
21 a further search of the vehicle and alerted to a duffle bag and jacket. Respondent admitted he had
22 marijuana in his duffle bag. A search of the duffle bag revealed a Ruger 9mm handgun with a
23 loaded ten-round magazine, a second loaded ten-round magazine, and a box of ammunition with
24 no round in the changer. Deputies also found a plastic baggie containing a green leafy substance
25 and a glass pipe with residue. Found in a jacket was a metal mint tin that contained a small
26 plastic baggie with a white rock-like substance. Respondent denied the "cocaine" was his. The
27 white rock-like substance field tested positive for cocaine and weighed 0.2 ounces, with an
28 estimated street value of \$100.

1 16. On or about July 27, 2007, the court granted Respondent's petition to be discharged
2 from probation, and to have the offense for possession of drug paraphernalia be designated a
3 Class A Class One misdemeanor, and to have Respondent's DNA expunged from the Arizona
4 Department of Public Safety data bank.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6
7 **(Commission of Acts Which if Done by a Licensee Would be
8 Grounds for Suspension or Revocation of License)**

9 17. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
10 of the Code in that he committed acts that if done by a licensed pharmacy technician, would be
11 grounds for suspension or revocation of the license. The circumstances are as follows:

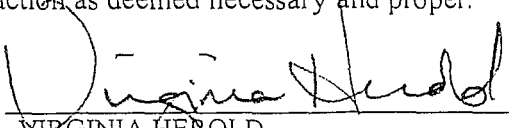
12 18. On or about March 8, 2005 as detailed in paragraphs 12 through 16, above,
13 Respondent was convicted of crimes substantially related to the qualifications, functions, and
14 duties of a licensed pharmacy technician, which would be grounds for discipline under section
15 4301, subdivision (l) of the Code.

16 **PRAYER**

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

- 19 1. Denying the application of Michael Joe Mattia for a Pharmacy Technician
20 Registration;
21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: 1/18/13


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

SD2012704150