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

In the Matter of the Petition to Revoke Probation Against:

Case No. 5068

STEVEN JOSEPH GUTIERREZ
1031 Tanager Lane
Fairfield, CA 94533

**DEFAULT DECISION AND
ORDER**

Pharmacy Technician License No. TCH 43751

Respondent. [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 1, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 5068 against Steven Joseph Gutierrez (Respondent) before the Board of Pharmacy. (A copy of the Petition to Revoke Probation is attached as exhibit A.)

2. On or about October 16, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 43751 to Respondent. The License was in effect at all times relevant to the allegations herein and will expire on August 30, 2014, unless renewed. Since on or about October 18, 2013, the License has been the subject of a disciplinary suspension.

3. On or about March 13, 2014, Respondent was served by Certified and First Class Mail with copies of: Petition to Revoke Probation No. 5068; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record, which was and is: 1031 Tanager Lane, Fairfield, CA 94533.

1 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
2 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
3 thereto, are required to be reported and maintained with the Board.

4 5. Service of the Petition to Revoke Probation was effective as a matter of law under
5 Government Code section 11505, subdivision (c) or Business & Professions Code section 124.

6 6. On or about March 15, 2014, the Certified Mail Domestic Return Receipt card that
7 was part of the Certified Mail service of the Petition to Revoke Probation and accompanying
8 documents was signed and returned, indicating receipt of the documents at Respondent's address.

9 7. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 of the accusation not expressly admitted. Failure to file a notice of defense shall
13 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
14 may nevertheless grant a hearing.

15 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
17 Petition to Revoke Probation No. 5068.

18 9. California Government Code section 11520 states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense or to appear at the
20 hearing, the agency may take action based upon the respondent's express admissions
21 or upon other evidence and affidavits may be used as evidence without any notice to
22 respondent.

23 10. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.
28 5068, finds that the charges and allegations in Petition to Revoke Probation No. 5068, are
separately and severally, found to be true and correct by clear and convincing evidence.

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DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Steven Joseph Gutierrez has
3 subjected his Pharmacy Technician License No. TCH 43751 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 License based upon the following violations alleged in the Petition to Revoke Probation which
7 are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

8 a. Respondent's License is subject to revocation pursuant to Business and Professions
9 Code section 4300(a), for failure to comply with a term and condition of probation, in that on or
10 about October 14, 2013 Respondent violated Term and Condition 17 of the probationary order
11 imposed on his license on October 7, 2013 in Case No. 4457 before the Board, requiring that he
12 abstain from possession or use of alcohol, controlled substances, dangerous drugs and their
13 associated paraphernalia, except when lawfully prescribed, when a biological sample that he
14 submitted tested positive for Marijuana.

15 b. Respondent's License is subject to revocation pursuant to Business and Professions
16 Code section 4300(a), for failure to comply with a term and condition of probation, based on his
17 violation(s) of Term and Condition 18 of the probationary order imposed on his license on
18 October 7, 2013 in Case No. 4457 before the Board, requiring that he participate in random drug
19 testing, at Respondent's expense, and that he fully cooperate with the Board or its designee and
20 submit to testing as directed, and further stipulating that any confirmed positive test for alcohol or
21 any drug not lawfully prescribed as part of a documented medical treatment would be considered
22 a violation of probation and also result in Respondent's automatic suspension. Respondent failed
23 to fully participate in and/or cooperate with drug testing protocols established by the Board or its
24 designee in that: Respondent failed to check in to determine if he was required to test on or about
25 November 3, November 10, and/or November 14, 2013, and/or on at least forty three (43)
26 occasions between November 14, 2013 and December 27, 2013; and Respondent failed to test
27 (submit a sample) on or about October 9, 2013, and/or on at least six (6) occasions between
28 November 14, 2013 and December 27, 2013.

1 c. Respondent's License is subject to revocation pursuant to Business and Professions
2 Code section 4300(a), for failure to comply with a term and condition of probation, based on his
3 violation(s) of Term and Condition 18 of the probationary order imposed on his license on
4 October 7, 2013 in Case No. 4457 before the Board, requiring that he participate in random drug
5 testing, at Respondent's expense, and that he fully cooperate with the Board or its designee and
6 submit to testing as directed, and further stipulating that any confirmed positive test for alcohol or
7 any drug not lawfully prescribed as part of a documented medical treatment would be considered
8 a violation of probation and also result in Respondent's automatic suspension. On or about
9 October 14, 2013, a biological sample submitted by Respondent tested positive for Marijuana.
10 Respondent failed to provide a written explanation as directed.

11
12 ORDER

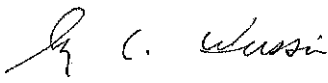
13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 43751, heretofore issued
14 to Respondent Steven Joseph Gutierrez, is revoked.

15 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
16 written motion requesting that the Decision be vacated and stating the grounds relied on within
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
18 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective on June 27, 2014.

20 It is so ORDERED May 28, 2014

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 By 
25 STAN C. WEISSER
26 Board President

27 40957584.DOC
28 DOJ Matter ID:SF2014407002

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
5 Facsimile: (415) 703-5480
Attorneys for Complainant

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

9 In the Matter of the Petition to Revoke Probation
Against:

Case No. 5068

10 **STEVEN JOSEPH GUTIERREZ**
11 **1031 Tanager Lane**
12 **Fairfield, CA 94533**

PETITION TO REVOKE PROBATION

13 **Pharmacy Technician License No. TCH 43751**

14 Respondent.

15 Complainant alleges:

16 PARTIES

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

19 2. On or about October 16, 2002, the Board of Pharmacy issued Pharmacy Technician
20 License Number TCH 43751 to Steven Joseph Gutierrez (Respondent). The Pharmacy
21 Technician License was in effect at all times relevant to the allegations herein and will expire on
22 August 30, 2014, unless renewed. Since on or about October 18, 2013, the License has been the
23 subject of a disciplinary suspension from practice due to a positive drug test result (see below).

24 3. In a disciplinary action titled "In the Matter of the Accusation against Steven Joseph
25 Gutierrez," Case No. 4475, the Board of Pharmacy issued a decision, effective October 7, 2013, in
26 which Respondent's Pharmacy Technician License was revoked, with revocation stayed in favor
27 of probation for a period of five (5) years with certain terms and conditions of probation. A copy
28 of that decision is attached as exhibit A and is incorporated herein by reference.

1 JURISDICTION AND STATUTORY PROVISIONS

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

5 5. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 6. Section 4300(a) of the Code provides that every license issued by the Board may be
9 suspended or revoked.

10 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
11 suspension of a Board-issued license, the placement of a license on a retired status, or the
12 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
13 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
14 licensee or to render a decision suspending or revoking the license.
15

16 FACTUAL BACKGROUND

17 8. The allegations in Accusation No. 4457, which Respondent admitted, were that on or
18 about August 20, 2011, Respondent was in possession of Marijuana, a Marijuana pipe, and over
19 100 tablets of generic Norco or Vicodin, without a medical Marijuana card or a prescription.
20

21 FIRST CAUSE TO REVOKE PROBATION

22 ((Failure to Abstain from Drug and Alcohol Use))

23 9. At all times after the effective date (October 7, 2013) of the Decision and Order
24 imposing probation on Respondent's License, Term and Condition 17 of that Order required
25 Respondent to completely abstain from the possession or use of alcohol, controlled substances,
26 dangerous drugs and their associated paraphernalia, except when lawfully prescribed, and to not
27 be in the same physical location as individuals using illicit substances. On or about October 14,
28 2013, a biological sample submitted by Respondent tested positive for Marijuana.

1 10. Respondent failed to provide a written explanation as directed. This failure to abstain
2 from possession or use of drugs/alcohol, as required, subjects Respondent's License to revocation.

3
4 SECOND CAUSE TO REVOKE PROBATION

5 (Failure to Cooperate with Drug Testing)

6 11. At all times after the effective date (October 7, 2013) of the Decision and Order
7 imposing probation on Respondent's License, Term and Condition 18 of that Order required
8 Respondent to participate in random testing, including but not limited to biological fluid testing,
9 breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its
10 designee, at Respondent's expense, for the entire probation period with the frequency of testing
11 determined by the Board or its designee, required Respondent to fully cooperate with the Board or
12 its designee and submit to testing as directed, and stated that any confirmed positive test for
13 alcohol or any drug not lawfully prescribed as part of a documented medical treatment would be
14 considered a violation of probation and would also result in Respondent's automatic suspension.

15 12. Respondent failed to fully participate in and/or cooperate with drug testing protocols
16 established by the Board or its designee in that: Respondent failed to check in to determine if he
17 was required to test on or about November 3, November 10, and/or November 14, 2013, and/or
18 on at least forty three (43) occasions between November 14, 2013 and December 27, 2013; and
19 Respondent failed to test (submit a sample) on or about October 9, 2013, and/or on at least six (6)
20 occasions between November 14, 2013 and December 27, 2013. This failure to fully participate
21 in and/or cooperate with drug testing subjects Respondent's License to revocation.
22

23 THIRD CAUSE TO REVOKE PROBATION

24 (Confirmed Positive Test for Marijuana)

25 13. At all times after the effective date (October 7, 2013) of the Decision and Order
26 imposing probation on Respondent's License, Term and Condition 18 of that Order required
27 Respondent to participate in random testing, including but not limited to biological fluid testing,
28 breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its

1 designee, at Respondent's expense, for the entire probation period with the frequency of testing
2 determined by the Board or its designee, required Respondent to fully cooperate with the Board or
3 its designee and submit to testing as directed, and stated that any confirmed positive test for
4 alcohol or any drug not lawfully prescribed as part of a documented medical treatment would be
5 considered a violation of probation and would also result in Respondent's automatic suspension.

6 14. On or about October 14, 2013, a biological sample submitted by Respondent tested
7 positive for Marijuana. Respondent failed to provide a written explanation as directed.
8 Respondent's License was automatically suspended on or about October 18, 2013. This
9 confirmed positive test subjects Respondent's License to revocation.

10
11 OTHER MATTERS – EXTENSION OF PROBATION

12 15. At all times after the effective date (October 7, 2013) of the Decision and Order
13 imposing probation on Respondent's License, Term and Condition 20 of that Order provided:

14 **20. Violation of Probation.**

15 If respondent has not complied with any term or condition of probation, the board
16 shall have continuing jurisdiction over respondent, and probation shall automatically be
17 extended, until all terms and conditions have been satisfied or the board has taken other
18 action as deemed appropriate to treat the failure to comply as a violation of probation, to
19 terminate probation, and to impose the penalty that was stayed. If respondent violates
20 probation in any respect, the board, after giving respondent notice and an opportunity to be
21 heard, may revoke probation and carry out the disciplinary order that was stayed.

22 If a petition to revoke probation or an accusation is filed against respondent during
23 probation, the Board shall have continuing jurisdiction, and the period of probation shall be
24 extended until the petition to revoke probation or accusation is heard and decided.

25 16. Pursuant to the operation of Term and Condition 20 of the probation order applicable
26 to Respondent's License, probation is automatically extended by the filing hereof, and/or by
27 Respondent's failure to comply with the terms and conditions of probation, until such time as this
28 Petition to Revoke Probation is heard and decided, or until the Board has taken other action as
deemed appropriate to treat the failure to comply as a violation of probation.

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PRAYER

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

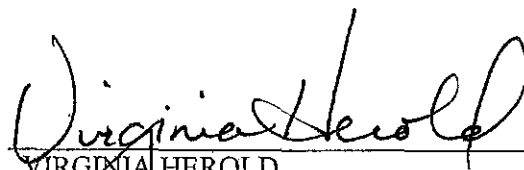
1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4475 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician License No. TCH 43751, issued to Steven Joseph Gutierrez (Respondent);

2. Revoking or suspending Pharmacy Technician License No. TCH 43751, issued to Steven Joseph Gutierrez (Respondent);

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

DATED: _____

3/11/14



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

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40877392.doc

Exhibit A

Decision and Order

Board of Pharmacy Case No. 4475

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

In the Matter of the Accusation Against:

STEVEN JOSEPH GUTIERREZ
407 Pintail Drive
Suisun City, CA 94585

Pharmacy Technician License No. TCH 43751

Respondent.

Case No. 4475

OAH No. 2013030742

DECISION AND ORDER

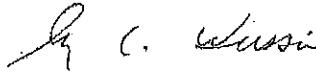
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 7, 2013.

It is so ORDERED on September 6, 2013.

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 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4475

11 **STEVEN JOSEPH GUTIERREZ**
12 **407 Pintail Drive**
13 **Suisun City, CA 94585**

OAH No. 2013030742

14 **Pharmacy Technician License No. TCH 43751**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

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

20 PARTIES

21 1. Virginia Herold (Complainant), Executive Officer, Board of Pharmacy, brought this
22 action in her official capacity and is represented in this matter by Kamala D. Harris, Attorney
23 General of the State of California, by Joshua A. Room, Supervising Deputy Attorney General.

24 2. Steven Joseph Gutierrez (Respondent) is represented in this proceeding by attorney
25 Steven A. Flinn, whose address is: 1001 2nd Street, Suite 315, Napa, CA 94559.

26 3. On or about October 16, 2002, the Board of Pharmacy issued Pharmacy Technician
27 License No. TCH 43751 to Respondent. The License was in full force and effect at all times
28 relevant to the charges in Accusation No. 4475 and will expire August 30, 2014, unless renewed.

1. JURISDICTION

2. 4. Accusation No. 4475 was filed before the Board of Pharmacy (Board), Department of
3. Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
4. statutorily required documents were properly served on Respondent on January 28, 2013.
5. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
6. No. 4475 is attached as exhibit A and incorporated herein by reference.

7. ADVISEMENT AND WAIVERS

8. 5. Respondent has carefully read, discussed with counsel, and understands the charges
9. and allegations in Accusation No. 4475. Respondent has also carefully read, discussed with
10. counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

20. CULPABILITY

21. 8. Respondent admits the truth of each and every charge and allegation in Accusation
22. No. 4475. Respondent agrees that his Pharmacy Technician License is subject to discipline and
23. agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

24. RESERVATION

25. 9. Admissions made by Respondent herein are only for the purposes of this proceeding,
26. or any other proceedings in which the Board of Pharmacy or other professional licensing agency
27. is involved, and shall not be admissible in any other criminal or civil proceeding.

28. ///

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

11 11. The parties understand and agree that facsimile copies of this stipulation, including
12 facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 43751, issued to Steven Joseph Gutierrez (Respondent), is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. Certification Prior to Resuming Work

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

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

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

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

- 1 a conviction of any crime
- 2 discipline, citation, or other administrative action filed by any state or federal agency
- 3 which involves respondent's pharmacy technician license or which is related to the
- 4 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
- 5 or charging for any drug, device or controlled substance.

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

7 **3. Report to the Board**

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

16 **4. Interview with the Board**

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

22 **5. Cooperate with Board Staff**

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

26 **6. Notice to Employers**

27 During probation, respondent shall notify all present and prospective employers of the
28 decision in case number 4475 and the terms, conditions and restrictions imposed, as follows:

1. Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of,
2 respondent undertaking any new employment, respondent shall cause his direct supervisor,
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed
5 individual(s) has/have read the decision in case number 4475 and the terms and conditions
6 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
7 supervisor(s) submit timely acknowledgement(s) to the board.

8 If respondent works for or is employed by or through a pharmacy employment service,
9 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
10 of the terms and conditions of the decision in case number 4475 in advance of commencing work
11 at each pharmacy. A record of this notification must be provided to the board upon request.

12 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
13 (15) days of respondent undertaking any new employment by or through a pharmacy employment
14 service, respondent shall cause his direct supervisor with the pharmacy employment service to
15 report to the board in writing acknowledging that he or she has read the decision in case number
16 4475 and the terms and conditions imposed thereby. It shall be respondent's responsibility to
17 ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

18 Failure to timely notify present or prospective employer(s) or to cause employer(s) to
19 submit timely acknowledgements to the board shall be considered a violation of probation.

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

25 7. Status of License

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

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 **8. Notification of a Change in Employment, Name, Address, or Phone**

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

12 **9. No Ownership of Licensed Premises**

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

20 **10. Reimbursement of Board Costs**

21 As a condition precedent to successful completion of probation, Respondent shall pay to the
22 board its costs of investigation and prosecution in the amount of \$2,305.00. Respondent shall be
23 permitted to pay these costs in a payment plan approved by the Board or its designee, so long as
24 full payment is made within fifty-four (54) months of the effective date of this decision. There is
25 to be no deviation from this schedule absent prior written approval by the Board or its designee.
26 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

27 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to
28 reimburse the board its costs of investigation and prosecution.

1 **11. Probation Monitoring Costs**

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

6 **12. Work Site Monitor**

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

17 **13. Notification of Departure**

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

22 **14. Employment Requirement: Tolling of Probation**

23 Except during periods of suspension, respondent shall, at all times while on probation, be
24 employed as a pharmacy technician in California for a minimum of ten (10) hours per calendar
25 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,
26 the period of probation shall be extended by one month for each month during which this
27 minimum is not met. During any such period of tolling of probation, respondent must
28 nonetheless comply with all terms and conditions of probation.

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

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

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

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

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

22 **16. Prescription Coordination and Monitoring of Prescription Use**

23 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
24 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
25 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
26 history with the use of methamphetamine and who will coordinate and monitor any prescriptions
27 for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
28 practitioner shall be provided with a copy of the board's Accusation and decision.

1 A record of this notification must be provided to the board upon request. Respondent shall
2 sign a release authorizing the practitioner to communicate with the board about respondent's
3 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist
4 shall report to the board on a quarterly basis for the duration of probation regarding respondent's
5 compliance with this condition. If any substances considered addictive have been prescribed, the
6 report shall identify a program for the time limited use of any such substances.

7 The board may require that the single coordinating physician, nurse practitioner, physician
8 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
9 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,
10 respondent shall notify the board immediately and, within thirty (30) days of ceasing, submit the
11 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of
12 respondent's choice to the board or its designee for its prior approval. Failure to timely submit
13 the selected practitioner or replacement practitioner to the board for approval, or to ensure the
14 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

Failure to comply with any such suspension shall be considered a violation of probation.

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

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

14 **18. Random Drug Screening**

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

1 Respondent may not resume work as a pharmacy technician until notified by the board in writing.

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

11 Failure to comply with any such suspension shall be considered a violation of probation.

12 **19. License Surrender While on Probation/Suspension**

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

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

25 **20. Violation of Probation**

26 If respondent has not complied with any term or condition of probation, the board shall
27 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
28 all terms and conditions have been satisfied or the board has taken other action as deemed

1 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
 2 to impose the penalty that was stayed. If respondent violates probation in any respect, the board,
 3 after giving respondent notice and an opportunity to be heard, may revoke probation and carry out
 4 the disciplinary order that was stayed.

5 If a petition to revoke probation or an accusation is filed against respondent during
 6 probation, the board shall have continuing jurisdiction, and the period of probation shall be
 7 automatically extended until the petition to revoke probation or accusation is heard and decided.

8 **21. 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.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
 14 discussed it with my attorney, Steven A. Flinn. I understand the stipulation and the effect it will
 15 have on my Pharmacy Technician License. I enter into this Stipulated Settlement and
 16 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
 17 Decision and Order of the Board of Pharmacy.

18
 19 DATED: 6/19/13 Steven J. Gutierrez
 20 STEVEN JOSEPH GUTIERREZ
 21 Respondent

22 I have read and fully discussed with Respondent Steven Joseph Gutierrez the terms and
 23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

24 I approve its form and content.
 25 DATED: 6-19-13 Steven A. Flinn
 26 STEVEN A. FLINN
 27 Attorney for Respondent

28

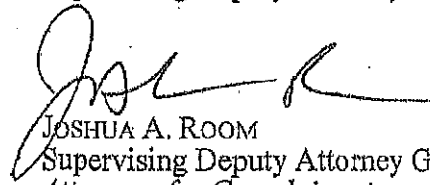
ENDORSEMENT

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

4 Dated: 7/2/2013

Respectfully submitted,

6 KAMALA D. HARRIS
Attorney General of California
7 FRANK H. PACOE
Supervising Deputy Attorney General

8 
9 JOSHUA A. ROOM
10 Supervising Deputy Attorney General
11 *Attorneys for Complainant*

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Exhibit A

Accusation No. 4475

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4475

11 **STEVEN JOSEPH GUTIERREZ**
12 **407 Pintail Drive**
13 **Suisun City, CA 94585**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 43751**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about October 16, 2002, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 43751 to Steven Joseph Gutierrez (Respondent). The License was in full force
23 and effect at all times relevant herein and will expire on August 30, 2014, unless renewed.

24 JURISDICTION

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

28 ///

1 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
4 controlled substance, except that furnished upon a valid prescription/drug order.

5 10. Health and Safety Code section 11170 provides that no person shall prescribe,
6 administer, or furnish a controlled substance for himself or herself.

7 11. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
8 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
9 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

10 12. Health and Safety Code section 11357, in pertinent part, makes it unlawful for any
11 person to possess **marijuana** or concentrated cannabis.

12 12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
13 person to use or be under the influence of any controlled substance in Schedule II (Health and
14 Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V,
15 except when administered by or under the direction of an authorized licensee.

16 COST RECOVERY

17 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation of the licensing
19 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 14. Section 4021 of the Code states:

22 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
23 11053) of Division 10 of the Health and Safety Code.”

24 15. Section 4022 of the Code states, in pertinent part:

25 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
26 except veterinary drugs that are labeled as such, and includes the following:

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

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“(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.”

16. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.

17. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **Hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

FACTUAL BACKGROUND

18. On or about August 10, 2011, officer(s) from the Napa (CA) Police Department saw Respondent driving a car from from which the smell of **marijuana** was detectable. The officer(s) followed Respondent until he parked the car. When questioned, Respondent admitted to having **marijuana** in the car, and admitted to not having a medical marijuana card. A subsequent search of Respondent’s person revealed approximately one hundred (100) tablets of what Respondent admitted was **Vicodin**, in his pocket. Respondent admitted to not having a prescription for the **Vicodin**. A further search of the car revealed another two (2) tablets, an orange medicine bottle containing a green leafy substance, and a case containing a glass smoking pipe. All of the tablets were subsequently identified as generic **Norco** or generic **Vicodin**, the green leafy substance was identified as **marijuana**, and the pipe was identified as one used for smoking **marijuana**. During the interaction, Respondent admitted to smoking **marijuana** and consuming **Vicodin**.

FIRST CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance(s))

19. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j) and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as described in paragraph 18 above, administered a controlled substance to himself.

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SECOND CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance(s))

20. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraph 18 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11357, in that Respondent, as described in paragraph 18 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Use/Being Under Influence of Controlled Substance(s))

22. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11550, in that Respondent, as described in paragraph 18 above, used and/or was under the influence of, conspired to use/be under the influence of, and/or assisted in or abetted use/being under the influence of, a controlled substance,.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

23. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 18 to 22 above, engaged in unprofessional conduct.

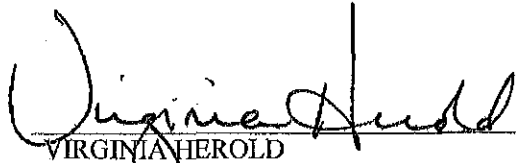
PRAYER

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

- 1. Revoking or suspending Pharmacy Technician License No. TCH 43751, issued to Steven Joseph Gutierrez (Respondent);

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- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 3. Taking such other and further action as is deemed necessary and proper.

DATED: 1/18/13 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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