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

In the Matter of the Statement of Issues Against:	Case No. SI 5637
XENIA JANE POBRE ELMIDO	OAH No. 2015120821
Applicant for Pharmacy Technician License	
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 at 5:00 p.m. on May 12, 2016.

It is so ORDERED on April 12, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

KAMALA D. HARRIS
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:	Case No. SI 5637
XENIA JANE POBRE ELMIDO	OAH No. 2015120821
Applicant for Pharmacy Technician License	**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**
Respondent.	

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

PARTIES

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

2. Respondent Xenia Jane Pobre Elmido ("Respondent") is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about December 18, 2014, Respondent filed an application dated December 15, 2014 with the Board of Pharmacy, to obtain licensure as a Pharmacy Technician.\

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JURISDICTION

4. Statement of Issues No. SI 5637 was filed before the Board and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on December 2, 2015.

5. A copy of Statement of Issues No. SI 5637 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands, the charges and allegations in Statement of Issues No. SI 5637. Respondent has also carefully read, and understands the effects of, this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. SI 5637.

10. Respondent agrees that her application for licensure is subject to denial and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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CONTINGENCY

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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that, upon satisfaction of all statutory and regulatory requirements for issuance of a license, a Pharmacy Technician License shall be issued to Respondent Xenia Jane Pobre Elmido and immediately revoked. Revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions.

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1. **Certification Prior to Commencing Work**

Respondent shall be automatically suspended from working as a pharmacy technician until she 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 commence 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 any such 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 or 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 board licensee. Respondent shall not have access to or control ordering, manufacturing or dispensing of dangerous drugs or devices or controlled substances. Failure to comply with any such suspension shall be considered a violation of probation.

2. **Ethics Counseling**

Within sixty (60) days of the effective date of this decision, Respondent shall enroll in an ethics counseling program approved in advance by the Board or its designee, and shall bear all expenses for such enrollment. Respondent shall successfully complete no fewer than twenty-four (24) sessions of ethics counseling within the first two (2) years of probation. Respondent shall submit to the Board or its designee on a quarterly basis a certification from the ethics program, confirming Respondent's attendance and participation. Failure to timely enroll, fully participate in, or complete an approved ethics program shall be considered a violation of probation.

3. **Probation Monitoring Costs**

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

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4. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following 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 contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- ☐ a conviction of any crime
- ☐ discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Pharmacy Technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

5. **Report to the Board**

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

6. **Cooperate with Board Staff**

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

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7. **Interview with the Board**

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

8. **Status of License**

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

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

9. **Employment Requirement; Tolling of Probation**

Except during any period(s) of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of forty (40) hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

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

"Cessation of work" means any calendar month during which respondent is not working for at least forty (40) hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working for at least forty (40) hours as a pharmacy technician as defined by Business and Professions Code section 4115.

10. **Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number SI 5637 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number SI 5637 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number SI 5637 in advance of commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that she has read the decision in case number SI 5637 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

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

12. **No Ownership of Licensed Premises**

Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

13. **License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action. Upon formal acceptance of the surrender, respondent will no longer be subject to the terms and conditions of probation. The surrender shall constitute a record of discipline and shall become a part of respondent's license history with the board. Upon acceptance of the surrender, respondent shall relinquish her license to the board within ten (10) days. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

14. **Violation of Probation**

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

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. **Completion of Probation**

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

ACCEPTANCE

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

DATED: _____

XENIA JANE POBRE ELMIDO
Respondent

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DATED: Feb. 18, 2016

XENIA JANE POBRE ELMIDO
Respondent

ENDORSEMENT

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

Dated: 2/29/2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Assistant Senior Attorney General

JOSHUA A. ROOM
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. SI 5637

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

In the Matter of the Statement of Issues Against: **XENIA JANE POBRE ELMIDO** **Applicant for Pharmacy Technician License** Respondent.	Case No. SI 5637 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about December 18, 2014, the Board of Pharmacy, Department of Consumer Affairs received an application for a Pharmacy Technician license from Xenia Jane Pobre Elmido (Respondent). On or about December 15, 2014, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about September 15, 2015.

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JURISDICTION

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 unless otherwise indicated.

STATUTORY AND REGULATORY PROVISIONS

4. Section 4300 of the Code states:

". . ..

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy. . ...."

". . ..

5. Section 480 of the Code states, in pertinent part:

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

"(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.

. . ."

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

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

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FACTUAL BACKGROUND

7. On or about January 30, 2010, while employed as a licensed Psychiatric Technician[1] with Napa State Hospital (NSH), Respondent purchased and delivered a cell phone to a patient in exchange for $200.00. The patient was housed in a unit at NSH where possession of cell phones by patients is prohibited. From January 30, 2010, to February 1, 2010, Respondent communicated with the patient and received communications from the patient on the cell phone that she delivered to him.

8. Respondent also purchased tobacco[2] for the patient and shared in the patient's profits from the sale of the tobacco to other NSH patients.

9. On or about May 27, 2010, the BVNPT mailed a letter to Respondent at her address of record. The letter was returned on June 16, 2010, as undelivered with no known forwarding address.

10. On or about January 12, 2011, the BVNPT filed and served an Accusation on Respondent. The BVNPT's Accusation was based on Respondent's conduct described in paragraphs 8, 9, and 10, above. On or about May 26, 2011, Respondent's Psychiatric Technician license was revoked by a Default Decision and Order issued by the BVNPT.

11. On or about June 24, 2015, Respondent's Petition for Reinstatement of her Psychiatric Technician's license was granted. However, prior to reinstatement, Respondent was ordered to comply with the condition that within sixty (60) days of the effective date of the decision granting her petition, she submitted to a psychiatric/psychological evaluation; and that within two (2) years of the effective date of the Decision, she take and pass the licensure examination currently required of Psychiatric Technician license applicants.

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[1] Respondent was issued Psychiatric Technician's license No. 31654 by the Board of Vocational Nursing and Psychiatric Technicians (BVNPT).

[2] Tobacco is a prohibited substance pursuant to NSH rules and regulations.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

12. Respondent's application is subject to denial under section 480(a)(2) and/or 480(a)(3)(A), in that Respondent committed an act involving dishonesty and deceit for her own monetary benefit when she obtained a prohibited cell phone for a patient at Napa State Hospital where she was employed as a licensed Psychiatric Technician, as set forth in paragraph 7, above. Such conduct, if done by a licensed Pharmacy Technician, would be grounds for suspension or revocation of licensure.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

13. Respondent's application is subject to denial under section 480(a)(2) and/or 480(a)(3)(B), in that Respondent committed an act involving dishonesty and deceit for her own monetary benefit when she obtained tobacco for a patient at Napa State Hospital and then shared in the profits from the sale of tobacco to other patients, as set forth in paragraph 8, above. Such conduct, if done by a licensed Pharmacy Technician, would be grounds for suspension or revocation of licensure.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

14. Respondent's application is subject to denial under section 480(a)(3)(B) pursuant to California Code of Regulations, title 16, section 1770, in that Respondent committed acts in violation of the rules and regulations of Napa State Hospital where she was employed as a licensed Psychiatric Technician, as set forth in paragraphs 7 and 8, above.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

15. Respondent's application is subject to denial under section 480(a)(3)(B) pursuant to California Code of Regulations, title 16, section 1770, in that Respondent committed acts in violation of the statutes and regulations governing her practice as a licensed Psychiatric Technician, as set forth in paragraphs 7, 8, 9, and 10, above.

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. Denying the application of Xenia Jane Pobre Elmido for a Pharmacy Technician's license;

2. Taking such other and further action as deemed necessary and proper.

DATED: 11/23/15

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

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