

**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

OAH No. 2015120821

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

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2 LINDA K. SCHNEIDER
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Attorneys for Complainant

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

11 In the Matter of the Statement of Issues Against:

Case No. SI 5637

12 **XENIA JANE POBRE ELMIDO**

OAH No. 2015120821

13 **Applicant for Pharmacy Technician License**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respondent.

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

18
19 **PARTIES**

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

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

26 3. On or about December 18, 2014, Respondent filed an application dated December 15,
27 2014 with the Board of Pharmacy, to obtain licensure as a Pharmacy Technician.\

28 ///

CONTINGENCY

1
2 11. 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. By signing the stipulation, Respondent understands and agrees
6 that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the
7 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
8 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
9 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
10 not be disqualified from further action by having considered this matter.

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

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

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

DISCIPLINARY ORDER

22
23
24 IT IS HEREBY ORDERED that, upon satisfaction of all statutory and regulatory
25 requirements for issuance of a license, a Pharmacy Technician License shall be issued to
26 Respondent Xenia Jane Pobre Elmido and immediately revoked. Revocation is stayed and
27 respondent is placed on probation for five (5) years on the following terms and conditions.

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1 **1. Certification Prior to Commencing Work**

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

7 During any such suspension, respondent shall not enter any pharmacy area or any portion of
8 any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
9 distributor of drugs), any drug manufacturer, or any other location where dangerous drugs or
10 devices or controlled substances are maintained. Respondent shall not do any act involving drug
11 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
12 manage, administer, or assist any board licensee. Respondent shall not have access to or control
13 ordering, manufacturing or dispensing of dangerous drugs or devices or controlled substances.
14 Failure to comply with any such suspension shall be considered a violation of probation.

15 **2. Ethics Counseling**

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

23 **3. Probation Monitoring Costs**

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

28 ///

1 **4. Obey All Laws**

2 Respondent shall obey all state and federal laws and regulations. Respondent shall report
3 any of the following to the board, in writing, within seventy-two (72) hours of such occurrence:

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

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

15 **5. Report to the Board**

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

24 **6. Cooperate with Board Staff**

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

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1 **7. Interview with the Board**

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

7 **8. Status of License**

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

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

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

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

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

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

6 10. Notice to Employers

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

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

17 If respondent works for or is employed by or through a pharmacy employment service,
18 respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy
19 of the terms and conditions of the decision in case number SI 5637 in advance of commencing
20 work at each pharmacy. A record of this notification must be provided to the board 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 her direct supervisor with the pharmacy employment service to
24 report to the board in writing acknowledging that she has read the decision in case number SI
25 5637 and the terms and conditions imposed thereby. It shall be respondent's responsibility to
26 ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

27 Failure to timely notify present or prospective employer(s) or to cause employer(s) to
28 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.

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

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

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

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

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

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

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

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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.

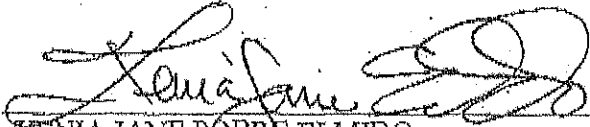
If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board 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: Feb. 18, 2016 
XENIA JANE POBRE ELMIDO
Respondent

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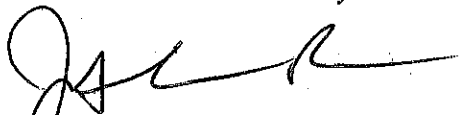
ENDORSEMENT

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

11
12 In the Matter of the Statement of Issues
Against:

Case No. SI 5637

13 **XENIA JANE POBRE ELMIDO**

STATEMENT OF ISSUES

14 **Applicant for Pharmacy Technician License**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

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

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1 JURISDICTION

2 3. This Statement of Issues 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 unless otherwise indicated.

5 STATUTORY AND REGULATORY PROVISIONS

6 4. Section 4300 of the Code states:

7 ". . . .

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

12 ". . . .

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

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

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

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

20 ". . ."

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

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

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FACTUAL BACKGROUND

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2 7. On or about January 30, 2010, while employed as a licensed Psychiatric Technician¹
3 with Napa State Hospital (NSH), Respondent purchased and delivered a cell phone to a patient in
4 exchange for \$200.00. The patient was housed in a unit at NSH where possession of cell phones
5 by patients is prohibited. From January 30, 2010, to February 1, 2010, Respondent communicated
6 with the patient and received communications from the patient on the cell phone that she
7 delivered to him.

8 8. Respondent also purchased tobacco² for the patient and shared in the patient's profits
9 from the sale of the tobacco to other NSH patients.

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

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

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

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26
27 ¹ Respondent was issued Psychiatric Technician's license No. 31654 by the Board of
28 Vocational Nursing and Psychiatric Technicians (BVNPT).

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

1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Unprofessional Conduct)

3 12. Respondent's application is subject to denial under section 480(a)(2) and/or
4 480(a)(3)(A), in that Respondent committed an act involving dishonesty and deceit for her own
5 monetary benefit when she obtained a prohibited cell phone for a patient at Napa State Hospital
6 where she was employed as a licensed Psychiatric Technician, as set forth in paragraph 7, above.
7 Such conduct, if done by a licensed Pharmacy Technician, would be grounds for suspension or
8 revocation of licensure.

9 SECOND CAUSE FOR DENIAL OF APPLICATION

10 (Unprofessional Conduct)

11 13. Respondent's application is subject to denial under section 480(a)(2) and/or
12 480(a)(3)(B), in that Respondent committed an act involving dishonesty and deceit for her own
13 monetary benefit when she obtained tobacco for a patient at Napa State Hospital and then shared
14 in the profits from the sale of tobacco to other patients, as set forth in paragraph 8, above. Such
15 conduct, if done by a licensed Pharmacy Technician, would be grounds for suspension or
16 revocation of licensure.

17 THIRD CAUSE FOR DENIAL OF APPLICATION

18 (Unprofessional Conduct)

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

23 FOURTH CAUSE FOR DENIAL OF APPLICATION

24 (Unprofessional Conduct)

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

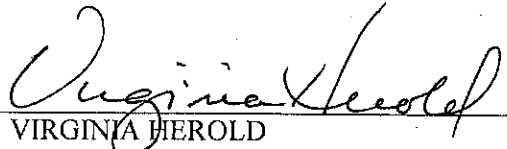
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PRAYER

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. 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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