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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:

XENIA JANE POBRE ELMIDO
633 Canterbury Circle
Vacaville, CA 95687
Pharmacy Technician License No. TCH 146222

Respondent.

Case No. 6134

**DEFAULT DECISION AND
ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 5, 2017, 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. 6134 against Xenia Jane Pobre Elmido (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

2. On or about May 13, 2016, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 146222 to Respondent. The Pharmacy Technician License expired on August 31, 2017, and has not been renewed. Pursuant to Business and Professions Code section 4300.1, this lapse in licensure does not deprive the Board of its authority to institute or continue this disciplinary proceeding

3. On or about September 13, 2017, Respondent was served by Certified and First Class Mail with copies of: Petition to Revoke Probation No. 6134; a Statement to Respondent; a Notice of Defense; a Request for Discovery; and the text of the Discovery Statutes (Government Code

1 sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to
2 Business and Professions Code section 4100, is required to be reported and maintained with the
3 Board. Respondent's address of record was and is 633 Canterbury Circle, Vacaville, CA 95687.
4 Also on or about September 13, 2017, Respondent was served with all of the above by Certified
5 and First Class Mail to another address: 508 Marina Blvd., Suisun City, CA 94585.

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

9 5. Government Code section 11506(c) 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
12 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
13 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
14 discretion may nevertheless grant a hearing.

15 6. The Board takes official notice of its records and the fact that Respondent failed to
16 file a Notice of Defense within 15 days after service of the Petition to Revoke Probation, and
17 therefore waived her right to a hearing on the merits of Petition to Revoke Probation No. 6134.

18 7. California Government Code section 11520(a) states, in pertinent part:

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

23 8. 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 6134, finds that the charges and allegations in Petition to Revoke Probation No. 6134, are
separately and severally, found to be true and correct by clear and convincing evidence.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Xenia Jane Pobre Elmido has
3 subjected her Pharmacy Technician License No. TCH 146222 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. In violation of Term and Condition 1 of the Decision and Order imposing probation
9 on her License, Respondent failed to achieve or submit proof of certification within one (1) year.

10 b. In violation of Term and Condition 2 of the Decision and Order imposing probation
11 on her License, Respondent failed to timely submit a plan for approval of an ethics program, to
12 timely enroll in an ethics program, or to submit certifications regarding participation in same.

13 c. In violation of Term and Condition 5 of the Decision and Order imposing probation
14 on her License, Respondent failed to timely submit Quarterly Report(s).

15 d. In violation of Term and Condition 7 of the Decision and Order imposing probation
16 on her License, Respondent failed to timely attend in-person meeting(s) as directed.

17 e. In violation of Term and Condition 6 of the Decision and Order imposing probation
18 on her License, Respondent failed to cooperate with probation and/or her probation monitor(s).

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 146222, heretofore issued to Respondent Xenia Jane Pobre Elmido, is revoked.

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

This Decision shall become effective at 5:00 p.m. on January 10, 2018.

It is so ORDERED on December 11, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

41868267.DOC
DOJ Matter ID:SF2017203417

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

(XENIA JANE POBRE ELMIDO)

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant 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**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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

Case No. 6134

13 **XENIA JANE POBRE ELMIDO**
14 **633 Canterbury Circle**
15 **Vacaville, CA 95687**
16 **Pharmacy Technician License No. TCH 146222**

PETITION TO REVOKE
PROBATION

Respondent.

17 Complainant alleges:

18 PARTIES

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

21 2. On or about May 13, 2016, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 146222 to Xenia Jane Pobre Elmido (Respondent). The Pharmacy
23 Technician License will expire on August 31, 2017, unless renewed.

24 3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Xenia
25 Jane Pobre Elmido," Case No. SI 5637, the Board of Pharmacy issued a decision, effective May
26 12, 2016, by which Respondent's Pharmacy Technician License was issued and immediately
27 revoked. The revocation was stayed and Respondent's Pharmacy Technician License was placed
28 on probation for a period of five (5) years with certain terms and conditions. A copy of that
decision is attached as Exhibit A and is incorporated herein by reference.

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SECOND CAUSE TO REVOKE PROBATION

(Failure to Enroll in Approved Ethics Counseling Program)

10. At all times after the effective date (May 12, 2016) of the Decision and Order imposing probation on Respondent’s License, Term and Condition 2 of that Order required that Respondent, within sixty (60) days of May 12, 2016, enroll in an ethics counseling program approved in advance by the Board or its designee, further required that Respondent complete no fewer than twenty-four (24) sessions of ethics counseling within the first two (2) years of probation, and further required that Respondent submit on a quarterly basis a certification from the ethics program confirming Respondent’s attendance and participation. Respondent failed to timely submit a plan for approval of an ethics program, to timely enroll in an ethics program, or to submit certifications regarding Respondent’s participation in same. These violations of probation subject Respondent’s License to revocation.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Submit Quarterly Reports)

11. At all times after the effective date (May 12, 2016) of the Decision and Order imposing probation on Respondent’s License, Term and Condition 5 of that Order required that Respondent report to the Board quarterly, on a schedule as directed and in person or in writing, as directed. Respondent was directed to submit a quarterly report in writing on July 20, 2016. She failed to do so. This violation of probation subject Respondent’s License to revocation.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Report in Person as Directed)

12. At all times after the effective date (May 12, 2016) of the Decision and Order imposing probation on Respondent’s License, Term and Condition 7 of that Order required that Respondent, upon receipt of reasonable prior notice, appear in person for interviews with the Board or its designee. Respondent was given notice and instructed to appear in person for interviews on September 6, 8, 9, or 27, 2016; she failed to appear at any of the available times. These violations of probation subject Respondent’s License to revocation.

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1 FIFTH CAUSE TO REVOKE PROBATION

2 (Failure to Cooperate with Board Staff)

3 13. At all times after the effective date (May 12, 2016) of the Decision and Order
4 imposing probation on Respondent's License, Term and Condition 6 of that Order required that
5 Respondent cooperate with the Board's inspection program and with the Board's monitoring and
6 investigation of Respondent's compliance with terms and conditions of her probation. As
7 detailed above, Respondent failed to timely cooperate on one or more occasions. These failure(s)
8 to timely cooperate as required subject Respondent's License to revocation.

9
10
11 OTHER MATTERS – EXTENSION OF PROBATION

12 14. At all times after the effective date (May 12, 2016) of the Decision and Order
13 imposing probation on Respondent's License, Term and Condition 14 of that Order provided:

14 **14. 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.

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

26 15. Pursuant to the operation of Term and Condition 14 of the probation order applicable
27 to Respondent's License, probation is automatically extended by the filing hereof, and/or by
28 Respondent's failure to comply with the terms and conditions of probation, until such time as this
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. SI 5637 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician License No. TCH 146222, issued to Xenia Jane Pobre Elmido (Respondent);

2. Revoking or suspending Pharmacy Technician License No. TCH 146222, issued to Xenia Jane Pobre Elmido (Respondent);

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

DATED: _____

9/15/17



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

SF2017203417
41822992.doc

Exhibit A

Decision and Order

Board of Pharmacy Case No. SI 5367

**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

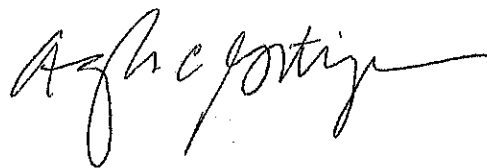
DECISION AND ORDER

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

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Assistant Senior Attorney General
3 JOSHUA A. ROOM
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5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
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.\

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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

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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.

28 ///

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.

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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.

28 ///

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.

1 **14. Violation of Probation**

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

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

12 **15. Completion of Probation**

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

15
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19 ACCEPTANCE

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

24
25 DATED: _____
26 XENIA JANE POBRE ELMIDO
 Respondent

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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.

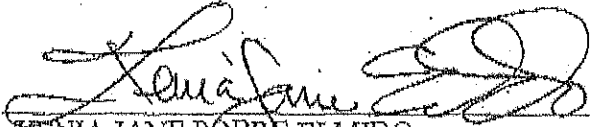
If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board 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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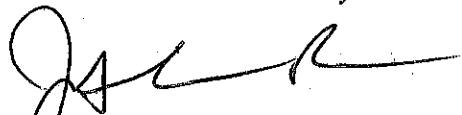
ENDORSEMENT

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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2 LINDA K. SCHNEIDER
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Attorneys for Complainant

7
8 LYDIA ZANE, Senior Legal Analyst
Telephone: (415) 703-5573

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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JURISDICTION

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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.

STATUTORY AND REGULATORY PROVISIONS

5
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."

28 ///

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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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.

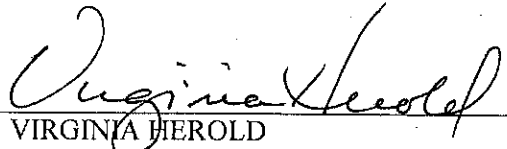
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PRAYER

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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