



California State Board of Pharmacy
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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Maynard Castillo</u>	Case No. <u>6221</u>
Address of Record: <u>1758 Sundown Ln, San Jose CA 95127</u> <u>Santa Clara County</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 6221, I hereby request to surrender my pharmacy technician license, License No. TCH 148723. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

[Signature]
 Applicant's Signature

12/4/18
 Date

[Signature]
 Executive Officer's Approval

12/5/18
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

MAYNARD FERNANDEZ CASTILLO

**Pharmacy Technician License
No. TCH 148723**

Respondent.

Case No. 6221

OAH No. 2018041145

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge 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 December 6, 2018.

It is so ORDERED on November 6, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Victor Law, R.Ph.
Board President

BEFORE THE
BOARD OF PHARMACY
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In the Matter of the Accusation Against:

MAYNARD FERNANDEZ CASTILLO,

Pharmacy Technician License
No. TCH 148723

Respondent.

Case No. 6221

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on September 13, 2018, in Oakland, California.

Deputy Attorney General Brett A. Kingsbury represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy.

Kenneth A. Mandel, Attorney at Law, represented respondent Maynard Fernandez Castillo, who was present throughout the administrative hearing.

The matter was submitted for decision on September 13, 2018.

FACTUAL FINDINGS

1. Complainant Virginia K. Herold filed the accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board).

2. On July 3, 2015, the Board issued Pharmacy Technician License No. TCH 148723 to Maynard Fernandez Castillo (respondent). The license was active at all times relevant here.

Cause for Discipline

3. On December 12, 2016, in the Superior Court of California, County of Santa Clara, respondent was convicted of four misdemeanor counts of violating Penal Code section 647, subdivision (j)(3) (using a concealed camcorder without the consent and with the intent to invade the privacy of another person). Imposition of sentence was suspended and respondent was placed on unsupervised probation for a period of three years on conditions that included completing 232 hours of community service in lieu of 30 days in custody, attending psychological counseling and paying various fines. The superior court judge did not require respondent to register as a sex offender.

The factual circumstances underlying the convictions occurred on July 10 and 11, 2015. An employee at Victoria's Secret lingerie store discovered a video camera hidden in the employee bathroom with the lens pointed at the toilet. The police were called to investigate. The videotape showed respondent placing the video camera at 11:30 p.m. on July 10, 2015, and several female employees using the bathroom the next day. The police were contacted after an employee noticed the camera lens on the afternoon of July 11, 2015.

Responsibilities of a Pharmacy Technician

4. Sara Mullen, Pharm.D., is employed by the Board as an inspector. She has been a licensed pharmacist for 16 years, including two years employed as a pharmacist-in-charge. Mullen described the job duties of a pharmacy technician as including: entering prescriptions in the computer, filling prescriptions, stocking and ordering medications and adjusting insurance claims. Mullen noted that pharmacy technicians have access to patient profile information and to controlled substances. Patient profiles contain the patient's identifying data, the name of their physicians and the dates of appointments with physicians.

5. Mullen considered respondent's offense to demonstrate a lack of judgment, unprofessionalism and a willingness to violate the privacy of others; these are qualities that are inconsistent with the high standards to which a pharmacy technician is held.

Evidence of Rehabilitation

6. Respondent worked weekends and nights at Victoria's Secret from 2008 until 2015. When he was arrested his position was lead cashier. Respondent resigned following his arrest. Respondent reports that he had been close friends with the women who were his colleagues at Victoria's Secret.

7. Respondent obtained the video camera online. On the evening of July 10, 2015, he placed the camera in a "Swiffer box" containing cleaning supplies. He poked a hole in the box with a pen and hid the camera in the box. The next day, when respondent arrived at work, he learned police officers had been to the store and realized that the video camera had been discovered. Respondent left the store without speaking to anyone. Respondent was 26 years old at the time.

8. Respondent wrote a letter of apology to the employees of Victoria's Secret. He expressed his embarrassment and shame for his misconduct. Respondent acknowledged that he had betrayed his friends, invaded their privacy, treated them with disrespect, and caused them emotional scars from which they may never heal. Respondent is clearly remorseful for his misconduct. He pledges never to engage in this type of conduct again; he does not want to hurt, disappoint or betray others, including his family members.

9. Respondent was so despondent and embarrassed by his misconduct that he attempted suicide by cutting his wrists. He felt unable to face his family and did not want to put them through the embarrassment his misconduct would cause. On July 12, 2015, at 10:45 a.m., respondent was admitted to St. Helena Hospital on a 72-hour hold pursuant to Welfare and Institutions Code section 5150; respondent was found to be a danger to himself. Respondent's commitment was extended until July 17, 2015, when he was discharged to his family. After he was discharged, one of his coworkers from Victoria's Secret came to his home to check on him, but he was too embarrassed to see her.

10. Respondent attended 22 sessions of psychotherapy with Richard Ferry, M.S., L.M.F.T., over a nine-month period beginning on June 28, 2016. Ferry testified at hearing. Ferry has been a licensed marriage and family therapist since 1979. He specializes in treating the perpetrators and victims of domestic violence, adults who were molested as children, and men suffering from low level depression, excess work, poor self-care, or a failure to achieve intimacy. Ferry spends 50 percent of his time working as an expert, and the other half providing therapy. He has testified as an expert frequently, often as an expert for the prosecution in domestic violence cases, and at times in family court cases.

Ferry reports that as respondent's involvement in therapy increased, he deepened his willingness to explore personal, familial and social factors that led to his offense. Initially, respondent was so ashamed, he was unable to make eye contact. As therapy progressed, respondent became more trusting of the process. Ferry reports that respondent is a painfully shy, awkward and immature individual. He is smart and hardworking, but had the social development of an 11 or 13 year old. Respondent did not know how to approach women; he was afraid of rejection and humiliation, but wanted to know them. Ferry considers respondent's decision to videotape them in the bathroom to be a compromise respondent reached with himself; it was a way to know women artificially without opening himself up to rejection. In June 2017 respondent transferred his therapy to a provider required by the superior court; Ferry reports that at the time of the transfer of treatment respondent was still anxious, but had made progress.

Ferry does not consider respondent to be a psychopath, a sexual predator or a danger to the community. Ferry opined that the likelihood that respondent will reoffend is very low.

11. Respondent began seeing Leonard Norwitz, L.C.S.W., on June 28, 2017, pursuant to the superior court's order. Respondent has voluntarily continued to see Norwitz after complying with the requirement for one year of therapy. Norwitz wrote a letter dated August 17, 2017, confirming that respondent was attending weekly therapy. Norwitz opined

that respondent's misconduct was the result of social immaturity which should in no way impair his judgment as a pharmacy technician. An updated letter from Norwitz describing respondent's current status was not offered.

12. Respondent completed 233 hours of community service work at Goodwill of Silicon Valley. Lisa Villa, the assistant manager of Goodwill of Silicon Valley, reports that respondent was a reliable volunteer with a great team player attitude and excellent customer service skills.

13. Respondent's sister, Jennielyn Castillo, B.S.N., R.N., wrote a letter in support of her brother, and travelled from Las Vegas to testify on his behalf. Castillo and respondent are very close. She considers him to be a caring, respectful, intelligent, helpful and humble individual. Castillo was very surprised by respondent's misconduct. Castillo has observed respondent to demonstrate a more mature attitude since the incident, and she commends him for complying with his criminal probation and attending therapy. Castillo trusts respondent; she believes that respondent has learned valuable lessons and will not repeat his misconduct.

14. On May 25, 2013, respondent graduated with a Bachelor of Science degree in biochemistry from San Jose State University. On June 26, 2015, he completed studies for his pharmacy technician certificate by earning an Associate in Science degree with high honors from Foothill College. Respondent is currently taking classes toward a Master's degree in chemical engineering.

15. Respondent has worked at Kaiser Permanente for four years. He was hired as a pharmacy clerk, and elevated to the position of pharmacy technician in November 2016. In July or August of this year, he voluntarily returned to the position of pharmacy clerk because he was afraid he would lose his pharmacy technician license. Respondent has been too embarrassed to tell his supervisors or coworkers at Kaiser about his conviction or this proceeding.

Costs of Investigation and Enforcement

16. The Board has incurred \$2,290 in enforcement costs. The Board's request for costs reimbursement is supported by a declaration and attachment that complies with California Code of Regulations, title 1, section 1042. The amount of prosecution costs incurred by the Board is reasonable.

LEGAL CONCLUSIONS

1. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 957.)

Causes for Discipline

2. Business and Professions Code sections 490, subdivision (a), and 4301, subdivision (l), authorize the Board to impose discipline on a licensee who is convicted of a crime that is substantially related to the qualifications, functions or duties of a pharmacy technician. Pharmacy technicians have access to private, personal information of patients. (Factual Findings 4 and 5.) Respondent's misconduct involved an invasion of the privacy rights of individuals in his workplace. A violation of Penal Code section 647, subdivision (j)(3), is substantially related to the qualifications, functions or duties of a pharmacy technician. As set forth in Factual Finding 3, cause for license discipline exists pursuant to Business and Professions Code sections 490, subdivision (a), and 4301, subdivision (l).

3. Business and Professions Code section 4301, subdivision (f), authorizes the Board to impose discipline on a licensee who commits an act involving moral turpitude, dishonest, fraud, deceit or corruption. Respondent's misconduct involved moral turpitude, dishonest, fraud, deceit or corruption. By reason of the matters set forth in Factual Finding 3, respondent's misconduct constitutes cause for discipline pursuant to Business and Professions Code section 4301, subdivision (f).

Disciplinary Considerations

4. Cause for discipline having been established, the issue is the level of discipline to impose. Respondent has the burden of proving by a preponderance of the evidence that he is rehabilitated to the extent that allowing him to maintain his license is consistent with the public interest. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

The Board is a consumer protection agency with the primary mission of protecting the health, safety, and welfare of the public. The Board's criteria of rehabilitation (Cal. Code Regs., tit. 16, § 2522) and its disciplinary guidelines (Cal. Code Regs., tit. 16, § 2524, Rev. 2/2017) provide guidance in determining the appropriate discipline. Criminal convictions that do not involve alcohol, dangerous drugs or controlled substances are Category II violations. The recommended discipline for Category II violations ranges from a minimum of revocation stayed, three years of probation with appropriate conditions, to revocation.

The relevant criteria of rehabilitation and mitigation include: the nature and severity of the act; actual or potential harm to the public; the overall disciplinary record; the overall criminal actions; the number and variety of violations; mitigation evidence; compliance with the terms of court-ordered probation; the time that has passed since the act occurred; other evidence of rehabilitation; recent performance evaluations; and recent letters from counselors.

Respondent invaded the privacy of coworkers and friends. Although he did not physically harm anyone, his conduct certainly upset his work colleagues. According to his therapists, respondent's misconduct occurred as the result of social immaturity. Ferry opined that respondent has made progress in therapy, is not a danger to the public and the likelihood

he will reoffend is very low. Although he has made progress in therapy, the extent of that progress to date was not established. Based on his therapists' opinions, the nature of his misconduct and his attempt to take his life, ongoing psychotherapy is important to respondent's continued rehabilitation. To his credit respondent continued attending therapy after satisfying the superior court's mandate.

Respondent has expressed sincere remorse. He is ashamed and embarrassed by his misconduct and has apologized to his victims. Respondent has complied fully with the terms of his criminal probation. There is no evidence of prior or subsequent criminal conduct. Three years have passed since respondent's arrest, and nearly two years since his conviction; he remains on informal probation until December 12, 2019.

Respondent has earned an Associate's degree and a Bachelor's degree and is working on his Master's degree in chemical engineering. These accomplishments are impressive.

Based on the totality of the evidence, it is found that respondent has established sufficient evidence of rehabilitation to warrant allowing him to maintain a probationary license with conditions that include ongoing therapy and notice to his employer of the decision in this matter. These probationary conditions will allow respondent to continue his rehabilitation while protecting the health, safety and welfare of the public.

Costs of Enforcement

5. Complainant has requested that respondent be ordered to pay the Board the costs of investigating and enforcing this case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The reasonable cost of enforcement incurred by the Board is \$2,290. (Factual Finding 16.)

The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining whether costs reimbursement should be ordered. Those factors include whether the licensee has been successful at hearing in obtaining a dismissal or reduction of the charges, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent has not established a basis to reduce the Board's costs reimbursement.

ORDER

Pharmacy Technician License No. TCH 148723 issued to Maynard Fernandez Castillo is revoked; however, the revocation is stayed and respondent is placed on probation for four years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- a. 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;
- b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- c. a conviction of any crime;
- d. 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.

2. 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.

3. 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 or more scheduled interviews with the Board or its designee during the period

of probation, shall be considered a violation of probation.

4. 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 his probation. Failure to cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 6221 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 10 days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the Board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6221, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the Board in writing within 15 days of the

change acknowledging that he or she has read the decision in case number 6221, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in case number 6221, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 6221, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments 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 or pharmacy management 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.

6. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the Board in writing within 10 days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

7. 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.

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 pharmacy technician 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. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,290. Respondent shall make said payments as follows: payments of \$1,145 due within 90 days of the beginning of probation and within 90 days of the following year. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

10. 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 his 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 it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three 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.

11. Certification Prior to Resuming Work

Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the Board within 10 days of receipt. Failure to maintain active, current certification or to timely submit proof of the same shall be considered a violation of probation.

12. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician for a minimum 40 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the Board in writing within 10 days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the Board in writing within 10 days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months. The Board or its designee may post a notice of the extended probation period on its website.

13. Violation of Probation

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and the Board shall

provide notice to respondent that 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. The Board or its designee may post a notice of the extended probation period on its website.

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, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, 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.

14. Clinical Diagnostic Evaluation

Within 30 days of the effective date of this decision, and on a periodic basis thereafter if required by the Board or its designee, respondent shall undergo, at his own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the Board or its designee. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the Board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board or its designee that practice may resume.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

15. Psychotherapy

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for prior approval, the name and qualifications of a licensed mental health practitioner of respondent's choice. Within 30 days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of respondent's choice to the Board for its prior approval. Within 30 days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the Board, and the Board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the Board or its designee may require respondent to undergo, at respondent's own expense, a mental health evaluation by a Board-appointed or Board-approved psychiatrist or psychologist. If the approved evaluator recommends that respondent continue psychotherapy, the Board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the Board. Respondent shall provide the therapist with a copy of the Board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the Board concerning respondent's fitness to practice, progress in treatment, and such other information required by the Board or its designee.

If at any time the treating therapist determines that respondent cannot practice safely or independently, the therapist shall notify the Board

immediately by telephone and follow up by written letter within three working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board that practice may be resumed.

During any suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances. Respondent shall not resume practice until notified by the Board.

During any suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

17. Criminal Probation Reports

Within 10 days of the effective date of this decision, or within 10 days of the issuance or assignment/replacement of same, whichever is earlier, respondent shall provide the Board or its designee in writing: a copy of the conditions of any criminal probation/parole applicable to respondent; and the name and contact information of any probation, parole or similar supervisory officer assigned to respondent. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after such report is issued. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

18. Completion of Probation

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

DATED: October 2, 2018

DocuSigned by:

Jill Schlichtmann

00097D940B484D9

JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 BRETT A. KINGSBURY
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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 6221

11 **MAYNARD FERNANDEZ CASTILLO**
12 1758 Sundown Lane
13 San Jose, CA 95127

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
148723

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 3, 2015, the Board issued Pharmacy Technician Registration
22 Number TCH 148723 to Maynard Fernandez Castillo (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on February 28, 2019, unless renewed.

25 **JURISDICTION**

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

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4. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

". . . .

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 4300.1 of the Code provides, in pertinent part, that the expiration, cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of the Board or a court of law shall not deprive the Board of jurisdiction to commence or proceed with any investigation or disciplinary action.

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code states:

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1 "The board shall take action against any holder of a license who is guilty of unprofessional
2 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
3 not limited to, any of the following:

4 ". . . .

5 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
6 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
7 whether the act is a felony or misdemeanor or not.

8 ". . . .

9 "(l) The conviction of a crime substantially related to the qualifications, functions, and
10 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
11 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
12 substances or of a violation of the statutes of this state regulating controlled substances or
13 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
14 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
15 The board may inquire into the circumstances surrounding the commission of the crime, in order
16 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
17 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
18 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
19 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
20 of this provision. The board may take action when the time for appeal has elapsed, or the
21 judgment of conviction has been affirmed on appeal or when an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
23 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
24 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
25 indictment.

26 ". . . ."

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

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

8 9. Section 490(a) of the Code states:

9 "In addition to any other action that a board is permitted to take against a licensee, a board
10 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
11 the crime is substantially related to the qualifications, functions, or duties of the business or
12 profession for which the license was issued."

13 **COSTS**

14 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction)**

20 11. Respondent is subject to disciplinary action under Code sections 490(a) and/or
21 4301(l), in that Respondent was convicted of a crime substantially related to the qualifications,
22 functions, or duties of a pharmacy technician. Specifically, on or about December 12, 2016,
23 Respondent pled guilty to and was convicted of violating Penal Code section 647(j)(3) (using
24 concealed camcorder, motion picture camera, or photographic camera without the consent of and
25 with the intent to invade the privacy of another person), a misdemeanor. The circumstances of
26 the crime were that in or around July 2015, Respondent positioned a hidden recorder in a
27 Victoria's Secret restroom where he was working.

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SECOND CAUSE FOR DISCIPLINE

(Act Involving Dishonesty or Moral Turpitude)

12. Respondent is subject to disciplinary action under Code section 4301(f) in that Respondent did an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are described above in the First Cause for Discipline.

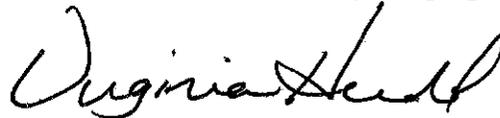
PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 148723, issued to Maynard Fernandez Castillo;
- 2. Ordering Maynard Fernandez Castillo to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 3. Taking such other and further action as is deemed necessary and proper.

DATED: _____

2/14/18



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

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