BEFORE THE BOARD OF PHARMACY
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

RANDY BRANCH
License No.: PT-6229

Respondent.

DEFAULT ORDER OF REVOCATION

THIS MATTER came before the New Mexico Board of Pharmacy (Board) at its regular meeting on October 18, 2010, and with a quorum present and a majority voting in the affirmative, the Board finds as follows:

1. On or about September 3, 2010, the Board issued a Notice of Contemplated Action (NCA) to Respondent Randy Branch (Respondent) alleging that the Board had sufficient evidence to take action to suspend or revoke Respondent’s pharmacy technician license based on his alleged violation of the Pharmacy Act [NMSA 1978, §§ 61-11-1 through 61-11-29] and the Controlled Substances Act [NMSA 1978, §§ 30-31-1 through 30-31-41] as a result of his making false statements on his October 25, 2009 Pharmacy Technician Application regarding his past criminal history.

2. On September 15, 2010, the United States Postal Service delivered the NCA to Respondent’s last known address as shown in the Board records.

3. Service by certified mail was accomplished in accordance with the Uniform Licensing Act (ULA), NMSA 1978, §§ 61-1-4 and 61-1-5, and the Pharmacy Act, NMSA 1978, §§ 61-11-1 through 61-11-29.

4. The NCA alleged that Respondent’s conduct — making false statements on his application regarding his criminal history — justified the Board taking action against his pharmacy technician license. NCA ¶ 3 and 4; NCA Attachment 1.

5. The Board may suspend or revoke a pharmacy technician license or registration if the licensee or registrant has violated the Pharmacy Act and/or the Controlled Substances Act, as prescribed by NMSA 1978, § 61-11-20(A)(1), (3), (7) and (17); 16.19.22.11(B) NMAC and 16.19.27.7(A) NMAC. Specifically, the Board may suspend or revoke Respondent’s pharmacy technician license upon grounds that Respondent:
   a. is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board;
   b. is guilty of a violation of the Controlled Substances Act;
   c. is guilty of procuring or attempting to procure pharmacy technician registration by making false representations to the Board;
   d. has violated any Board rule.

Randy Branch Default Order of Revocation, Case No. 2009-125, Page 1 of 2
6. Respondent did not request a hearing within twenty days of the September 15, 2010 service of the NCA, as provided by the ULA § 61-1-4(D)(3) and (E).

7. Respondent did not appear at the October 18, 2010 Board meeting. Pursuant to the ULA § 61-1-4(E), if Respondent does not timely request a hearing, the Board may take action contemplated in the NCA against Respondent’s license by default, and this action is final and not subject to judicial review.

**IT IS THEREFORE ORDERED THAT RESPONDENT'S PHARMACY TECHNICIAN LICENSE NO. PT-6229 IS HEREBY REVOKED BY DEFAULT.**

**IT IS FURTHER ORDERED THAT**, pursuant to the ULA § 61-1-4(G), Respondent shall pay the costs of the Board’s investigation in the amount of $400.00 within ninety (90) days after this Default Order of Revocation is received in the Board office.

__________________________
Joseph D. CROSS, R.Ph., Chair
New Mexico Board of Pharmacy

Received in Board Office this ______ day of ______, 2010.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Default Order of Revocation was mailed by certified mail, return receipt requested, on ______, 2010 to:

Randy Branch
RR 4 Box 34
Hernandez NM 87537

Certified Mail No. 7009 0820 0000 5065 0718

__________________________
New Mexico Board of Pharmacy

Randy Branch Default Order of Revocation, Case No. 2009-125, Page 2 of 2
IN THE MATTER OF:  

RANDY BRANCH  
License No.: PT-6229  

Respondent.

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Board of Pharmacy (hereafter the "Board") has before it sufficient evidence, which if not rebutted or satisfactorily explained at a formal hearing, will justify the Board suspending or revoking the pharmacy technician license of the Respondent in the State of New Mexico, fining her, and assessing costs of investigation against him.

The right to take such contemplated action exists pursuant to NMSA 1978, Sections 61-11-20 (A)(1), (3), (7) and (17) of the Pharmacy Act; NMSA 1978 Section 30-31-25 (A)(3)(4) of the Controlled Substance Act; Title 16 Chapter 19 Part 22 (11)(B) and Title 16 Chapter 19 Part 27.7 (A(1) (5) of the New Mexico Administrative Code, which provide in pertinent part:

61-11-20 DISCIPLINARY PROCEEDINGS; PHARMACY ACT:

A. In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may... suspend or revoke any certificate of registration or license held ... under the Pharmacy Act [this article] upon grounds that the licensee:

(1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board;

(3) is guilty of a violation of the Controlled Substances Act [30-31-1 NMSA 1978], the Pharmacy Act or the New Mexico Drug, Device and Cosmetic Act [Chapter 26,
Article 1 NMSA 1978;

(7) is guilty of procuring or attempting to procure licensure as a pharmacist or pharmacist intern, registration as a pharmacy technician or licensure for a pharmacy or pharmaceutical business in this state for himself or another by knowingly making or causing to be made false representations to the board;

(17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act, or

30-31-23. Controlled substances; possession prohibited

A. It is unlawful for any person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by the Controlled Substances Act [30-31-1 NMSA 1978]. It is unlawful for any person intentionally to possess a controlled substance analog.

30-31-25 Controlled substances; prohibited acts

A. It is unlawful for any person:

(3) to intentionally acquire or obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) to intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under the Controlled Substances Act [30-31-1 NMSA 1978], or any record required to be kept by that act;

16.19.22.11 Improper Activities of Pharmacy Technicians

B. In Accordance with section 61-11-20 NMSA 1978 a pharmacy technicians registration may be revoked, denied, or suspended for grounds stated in section 61-11-20(A).

16.19.27.7 Definitions: Dishonorable conduct by a pharmacist intern licensed pursuant to NMSA 61-11-6, or pharmacy technician registered pursuant to NMSA 61-11-6

A. Dishonorable conduct by a pharmacist intern or pharmacy technician shall mean,
among other things, but not be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the Board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

THIS ACTION IS BASED ON THE FOLLOWING ALLEGATIONS:

1. The Respondent is a pharmacy technician licensed to practice in the State of New Mexico. The Board has jurisdiction to hear this matter pursuant to the Pharmacy Act, NMSA 1978, Sections 61-11-1 through 61-11-29.

2. The general nature of the allegations is contained in ATTACHMENT 1.

3. The general nature of the evidence is as follows:

Respondent, a non-certified pharmacy technician registered by the Board, signed his New Pharmacy Technician Application on October 25, 2009, that he had never been arrested, investigated for, charged with, convicted of, sentenced, entered a plea of nolo contendere, or entered into any other legal agreements for any criminal offense in any state, territory or possession of the United States or by the federal government. Respondent entered into a Plea and Disposition Agreement on March 25, 2008 for the felony offense of Perjury in the First Judicial District Court, County of Santa Fe, State of New Mexico (N. D-0101-CR-200700633).

4. Unless these allegations are explained or rebutted at a formal hearing, they constitute justification for the Board of Pharmacy to suspend or revoke the New Mexico pharmacy license of Respondent, Randy Branch, and to fine him. The Board will suspend or revoke Randy Branch’s pharmacist technician license and/or fine him unless, within twenty (20) days from the date of receipt of this Notice of Contemplated Action, he submits a written request for a hearing by certified mail, return receipt requested. Such letter requesting a formal hearing should be mailed to Mr. William
Pursuant to Section 61-1-8 of the Uniform Licensing Act, the Respondent is advised of the following:

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to Section 61-1-4, NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District
Courts. Depositions may be used as in proceedings governed by those rules.

Date: 4-2-10

Chairperson
New Mexico Board of Pharmacy
5200 Oakland NE Suite A
Albuquerque, New Mexico 87113
(505) 222-9830

Administrative Prosecutor:
David Tourek
Assistant Attorney General
New Mexico Attorney General's Office
111 Lomas Blvd NW, Suite 300
Albuquerque, New Mexico 87102
(505) 222-9087

Certified Mail No.: ___________________________
Return Receipt Requested