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

In the Matter of the Accusation Against:

Case No. 2462

BRENT THORNTON SMITH
251 South Oak Park Blvd., #19
Grover Beach, CA 93433-4209

**DEFAULT DECISION
AND ORDER**

Pharmacy Technician License No. TCH 18791

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about December 28, 2001, Complainant Patricia F. Harris, in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, filed Accusation No. 2462 against Brent Thornton Smith (Respondent) before the Board of Pharmacy (Board).

2. On or about March 29, 1996, the Board of Pharmacy issued Pharmacy Technician License Number TCH 18791 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2003, unless renewed.

3. On or about January 7, 2002, G. Griffith, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation (Case No. 2462), Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which

1 was and is 251 South Oak Park Blvd., #19, Grover Beach, CA 93433-4209. Copies were also
2 sent to the following additional addresses: 496 Aspen #212C, Arroyo Grande, CA 93420, and
3 4092 N. Chestnut, #263, Fresno, CA 93726. A copy of the Accusation, the related documents,
4 and Declaration of Service are incorporated herein by reference.

5 4. Service of the Accusation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 5. On or about January 8, 2002, Respondent signed a certified mail receipt
8 for the aforementioned documents.

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service
15 of the Accusation and therefore waived his right to a hearing on the merits of the Accusation
16 (Case No. 2462.)

17 8. California Government Code section 11520 states, in pertinent part:

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

21 9. Pursuant to its authority under Government Code section 11520, the Board
22 finds Respondent is in default. The Board will take action without further hearing and, based on
23 Respondent's express admissions by way of default and the evidence before it finds that the
24 allegations in the Accusation (Case No. 2462) are true.

25 10. The total costs for investigation and enforcement are \$1,138.50 as of
26 February 13, 2002.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Brent Thornton Smith
3 has subjected his Pharmacy Technician License Number TCH 18791 to discipline.

4 2. A copy of the Accusation and the related documents are incorporated
5 herein by reference.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
8 Technician License based upon Business and Professions Code sections 4301(f), (h), (j), (k), (l),
9 and 4060 as alleged in the Accusation.

10 ORDER

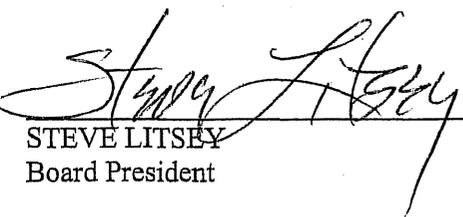
11 IT IS SO ORDERED that Pharmacy Technician License Number TCH 18791,
12 heretofore issued to Respondent Brent Thornton Smith, is revoked.

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

18 This Decision shall become effective on April 28, 2002.

19 It is so ORDERED March 29, 2002

20
21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 By: 

25 STEVE LITSEY
26 Board President

27 03583110-LA2001AD2135
28 krk

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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.

11 BRENT THORNTON SMITH,
12 251 South Oak Park Blvd., #19
Grover Beach, CA 93433-4209

OAH No.

A C C U S A T I O N

13 Pharmacy Technician License No. TCH 18791

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

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

21 2. On or about March 29, 1996, the Board of Pharmacy issued Pharmacy
22 Technician License Number TCH 18791 to Brent Thornton Smith (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on June 30, 2003, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Pharmacy (Board), under
27 the authority of the following sections of the Business and Professions Code (Code).

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4. Section 4301 of the Code states:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . .

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

. . .

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under Chapter 9 (commencing with Section 4000) of the Business and Professions Code, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

. . .

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under Chapter 9 (commencing with Section 4000) of the Business and Professions Code. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall

1 be conclusive evidence only of the fact that the conviction occurred. The board may inquire into
2 the circumstances surrounding the commission of the crime, in order to fix the degree of
3 discipline or, in the case of a conviction not involving controlled substances or dangerous drugs,
4 to determine if the conviction is of an offense substantially related to the qualifications,
5 functions, and duties of a licensee under Chapter 9 (commencing with Section 4000) of the
6 Business and Professions Code. A plea or verdict of guilty or a conviction following a plea of
7 nolo contendere is deemed to be a conviction within the meaning of this provision. The board
8 may take action when the time for appeal has elapsed, or the judgment of conviction has been
9 affirmed on appeal or when an order granting probation is made suspending the imposition of
10 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the
11 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
12 verdict of guilty, or dismissing the accusation, information, or indictment.

13 5. Section 4060 of the Code states:

14 No person shall possess any controlled substance, except that furnished to a
15 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
16 pursuant to a drug order issued by a physician assistant pursuant to Section 3502.1 or a nurse
17 practitioner pursuant to Section 2836.1. This section shall not apply to the possession of any
18 controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist,
19 veterinarian, physician assistant, or nurse practitioner, when in stock in containers correctly
20 labeled with the name and address of the supplier or producer.

21 Nothing in this section authorizes a nurse practitioner or a physician assistant to
22 order his or her own stock of dangerous drugs and devices.

23 6. Title 16, California Code of Regulations, section 1770 states that for the
24 purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division
25 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
26 considered substantially related to the qualifications, functions or duties of a licensee or
27 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or
28 registrant to perform the functions authorized by his license or registration in a manner consistent

