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Attorneys for Complainant

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

In the Matter of the Accusation Against: MICHELLE VILLA AKA MICHELLE GARIBAY 425 West Monterey Road Corona, CA 92882 Pharmacy Technician Registration No. TCH 10790 Respondent.	Case No. 2597 OAH No. L-2003100162 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Christina M. Thomas, Deputy Attorney General.

2. Michelle Villa aka Michelle Garibay (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

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3. On or about November 26, 1993, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 10790 to Michelle Villa aka Michelle Garibay. The Registration expired on June 30, 2003, and has not been renewed.

JURISDICTION

4. Accusation No. 2597 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 31, 2003. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2597 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2597. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; 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.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2597, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician Registration No. TCH 10790 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician Registration without

further process.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the (Board) may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 10790, issued to Respondent Michelle Villa aka Michelle Garibay is surrendered and accepted by the Board of Pharmacy.

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14. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

15. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.

16. Respondent shall cause to be delivered to the Board both her Registration, wall and pocket license certificate on or before the effective date of the Decision and Order.

17. Respondent understands and agrees that if she ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 2597 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

18. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $10,000.00 prior to issuance of a new or reinstated license.

ACCEPTANCE

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

DATED: 9-20-04.

Michelle Villa
MICHELLE VILLA AKA MICHELLE GARIBAY
Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 10/21/09

BILL LOCKYER, Attorney General
of the State of California

CHRISTINA M. THOMAS
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number/Matter ID: 03583110-LA2002AD2593
PR (07/08/2004)
60047790.wpd

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

In the Matter of the Accusation Against: MICHELLE VILLA AKA MICHELLE GARIBAY 425 West Monterey Road Corona, CA 92882 Pharmacy Technician Registration No. TCH 10790 Respondent.	Case No. 2597 OAH No. L-2003100162

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 5, 2005.

It is so ORDERED December 6, 2004.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2597

BILL LOCKYER, Attorney General
of the State of California
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BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Accusation Against: MICHELLE VILLA aka MICHELLE GARIBAY 425 West Monterey Road Corona, CA 92882 Pharmacy Technician Registration No. TCH 10790 Respondent.	Case No. 2597 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about November 26, 1993, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 10790 to Michelle Villa aka Michelle Garibay (Respondent). The Pharmacy Technician Registration expired on June 30, 2003, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118 of the Code states, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

5. Section 4300 of the Code, in pertinent part, states:

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

6. Section 4301 of the Code, in pertinent part, 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."

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

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

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board."

7. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

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

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

9. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer."

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

11. <u>DANGEROUS DRUGS/CONTROLLED SUBSTANCES</u>

a. "Methamphetamine" is a Schedule II controlled substance as defined in Health and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

b. "Valium," a trade name for the chemical substance diazepam, a benzodiazepam derivative, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(8) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

c. "Vicodin" is a Schedule III controlled substance as defined in Health and Safety Code section 11056(b)(1) and is categorized as a dangerous drugs according to section 4022 of the Code.

d. "Xanax," a brand name for alprazolam, is an anti-anxiety benzodiazepin and is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and is categorized as a dangerous drug pursuant to section 4022(c) of the Code.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

12. Respondent is subject to disciplinary action under sections 4300, 4301(f), and (l), and 490 of the Code, as defined in Title 16, California Code of Regulations, section 1770, on the grounds that Respondent was convicted of a substantially related crime. The circumstances are as follows:

a. On or about January 15, 2003, Respondent was convicted by the Court on a plea of guilty, of one count of violating Penal Code section 487(a) (grand theft, property over $400), a felony, in the Los Angeles County Superior Court, Case NO. KA059225, entitled *The People of the State of California v. Michelle Rene Garibay.*

b. The circumstances surrounding the conviction are that on or about November 6, 2002, Respondent was arrested for stealing bottles of prescription medications (vicodin and xanax, controlled substances) from her employer, CBC Pharmacy and Bill Chung. Respondent admitted to the arresting officer that she had been stealing medications for "not [a] long" period of time from CBC Pharmacy and Bill Chung.

c. Further, on or about November 6, 2002, after Respondent's admission, Respondent's residence was searched and additional dangerous drugs and controlled substances, without prescriptions, were found; namely, methamphetamine and valium.

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SECOND CAUSE FOR DISCIPLINE

(Possession of Dangerous Drugs/Controlled Substances Without a Prescription)

13. Respondent is subject to disciplinary action under sections 4300 and 4301 (f), (j) and (o) of the Code on the grounds of unprofessional conduct for violating section 4060 of the Code, in that Respondent possessed dangerous drugs and controlled substances without a prescription. The circumstances are described in paragraph 12 above.

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 No. TCH 10790, issued to Michelle Villa aka Michelle Garibay;

2. Ordering Michelle Villa aka Michelle Garibay 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;

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

DATED: 7/24/03

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

DOJ DN: 03583110-LA2002AD2593
7/11/2003dmc