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

In the Matter of the Accusation Against: JULIE A. OLIVER P.O. Box 1371 San Jacinto, CA 92581-1371 25655 Louisa Lane Sun City, CA 92565 Pharmacist Technician License No. 28175 Respondent.	Case No. 2648 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 20, 2004, Complainant Patricia F. Harris ("Complainant"), in her official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 2648 against JULIE A. OLIVER ("Respondent") before the Board of Pharmacy ("Board").

2. On or about January 29, 1999, the Board issued Pharmacist Technician License No. 28175 to Respondent. The license expired on March 31, 2004, and has not been renewed.

3. On or about July 29, 2004, Mona S. Sebastian, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.

2648, 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 was and is P. O. Box 1371, San Jacinto, CA 92581-1371. The Accusation packet was also served on Respondent at a secondary address of 25655 Louisa Lane, Sun City, CA 92565. A copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

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

5. On or about August 19, 2004, the aforementioned documents sent to P.O. Box 1371, San Jacinto, CA 92581-1371 by certified mail were returned by the U.S. Postal Service marked "Unclaimed." A copy of the postal returned documents are attached hereto as Exhibit B, and are incorporated herein by reference. The other packets sent to Respondent by regular and certified mail were not returned to the Department of Justice.

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2648.

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

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

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on

Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A and B, finds that the allegations in Accusation No. 2648 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent JULIE A. OLIVER has subjected her Pharmacist Technician License No. 28175 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

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

4. The Board is authorized to revoke Respondent's Pharmacist Technician License based upon the following violations alleged in the Accusation:

a. Business and Professions Code sections 4301(k), 4301(l), and 490 - conviction of crime;

b. Business and Professions Code section 4301(a) - gross immorality;

c. Business and Professions Code section 4301(f) - commission of an act involving moral turpitude;

d. Business and Professions Code section 4301(h) - use of dangerous drugs; and

e. Business and Professions Code section 4301(j) - violation of statutes.

5. The Board's reasonable costs of investigation and prosecution of this case are $3333.50.

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ORDER

IT IS SO ORDERED that Pharmacist Technician License No. 28175, heretofore issued to Respondent JULIE A. OLIVER, 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 on March 13, 2005.

It is so ORDERED February 11, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2648, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents

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Exhibit A

Accusation No. 2648,
Related Documents and Declaration of Service

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

In the Matter of the Accusation Against: JULIE A. OLIVER P.O. Box 1371 San Jacinto, CA 92581-1371 Pharmacist Technician License No. 28175 Respondent.	Case No. **ACCUSATION**

Complainant Patricia F. Harris 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 January 21, 1999, the Board of Pharmacy issued Pharmacist Technician License Number 28175 to JULIE A. OLIVER ("Respondent"). The license expired on March 31, 2004, and has not been renewed.[1]

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1. Pursuant to Penal Code section 23, Respondent was prohibited from practicing as a pharmacy technician while on pretrial O.R. release or on bail pending resolution of Riverside County Superior Court Case No. SWF 003357 entitled *People of the State of California* v. *Julie Ann Oliver*, or Board disciplinary proceeding, whichever concludes first, effective July 1, 2003.

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 4300 of the Code states in pertinent part:

"(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 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.

" . . .

"(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 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.

" . . . "

6. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for

self-use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

7. Section 118, subdivision (b), of the Code provides that the suspension or expirationof 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.

8. Section 490 of the Code 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."

9. Section 125.3 of the Code states, 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.

10. 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."

DRUGS

11. "Hydrocodone" is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(J) and a dangerous drug pursuant to Business and Professions Code section 4022(c). "Vicodin" is a trade name for the narcotic substance "Hydrocodone."

CAUSE FOR DISCIPLINE

(Conviction Of Crime)

12. Respondent is subject to disciplinary action under sections 4301(k), 4301(l) and 490 in that on or about January 16, 2004, Respondent pled guilty to Counts 1 (Penal Code section 503, embezzlement, a felony) and 3 (Health and Safety Code section 11351, possession of controlled substances for sale [Hydrocodone], a felony. Respondent also admitted that she took property of a value in excess of $150,000 pursuant to Penal Code section 12022.6(a)(2). These convictions are substantially related to the qualifications, functions, and duties of the license (pharmacy technician) which Respondent holds. The circumstances are as follows:

A. On or about January 2000, through and including November 2001, Respondent, while in the employ of Best Pharmacy as a pharmacy technician) embezzled money in excess of $150,000. She also illegally possessed Vicodin.

B. On January 16, 2004, Respondent was sentenced to State Prison for a total term of 3 years.

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SECOND CAUSE FOR DISCIPLINE

(Gross Immorality)

13. Respondent is subject to disciplinary action under section 4301(a) in that she committed acts which were unprofessional and grossly immoral, as more particularly described in paragraph 11, above.

THIRD CAUSE FOR DISCIPLINE

(Commission of an Act Involving Moral Turpitude)

14. Respondent is subject to disciplinary action under section 4301(f) in that she committed acts which involved moral turpitude, dishonesty, fraud, deceit, or corruption, as more particularly described in paragraph 11, above.

FOURTH CAUSE FOR DISCIPLINE

(Use of Dangerous Drugs)

15. Respondent is subject to disciplinary action under section 4301(h) in that she used a dangerous drug or alcoholic beverage to the extent or in a manner as to be dangerous or injurious to herself or to the public, as more particularly described in paragraph 11, above.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Statutes)

16. Respondent is subject to disciplinary action under section 4301(j) in that she violated statutes of this State regulating controlled substances and dangerous drugs, as more particularly described in paragraphs 11, 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 Pharmacist Technician License Number 28175, issued to JULIE A. OLIVER.

2. Ordering JULIE A. OLIVER 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: 7/20/04

P. J. Harris

Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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