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

In The Matter of the Accusation Against:	Case No. 2716
NIKUNJ C. PATEL 123 Oceano Avenue #11 Santa Barbara, CA 93109 Pharmacy Technician Registration No. TCH 28658 Respondent	

ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective February 10, 2005, NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied.

IT IS SO ORDERED this 7th day of February, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY GOLDENBERG
Board President

BILL LOCKYER, Attorney General
of the State of California
STEPHEN S. HANDIN, State Bar No. 71100
Supervising Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
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Attorneys for Complainant

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

In the Matter of the Accusation Against: NIKUNJ C. PATEL 313 W. 64th Street Inglewood, CA 90302 Pharmacy Technician License No. TCH 28658 Respondent.	Case No. 2716 OAH No. L-2004060131 **STIPULATED SURRENDER OF LICENSE AND ORDER**

In the interest of a prompt and speedy resolution of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation with respect to Nikunj C. Patel.

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy (Board). 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 Stephen S. Handin, Supervising Deputy Attorney General.

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2. Nikunj C. Patel (Respondent) is represented in this proceeding by attorney Allen D. West, Esq., whose address is 121 Torrance Boulevard, Suite 201, Redondo Beach, CA 90277.

3. On or about March 12, 1999, the Board issued Pharmacy Technician License No. TCH 28658. 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, 2006, unless renewed.

JURISDICTION

4. Accusation No. 2716 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 28, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2716 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2716. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2716, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician License No. TCH 28658 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician License without further process.

CONTINGENCY

10. 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 or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his 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 of License and 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.

11. 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.

12. 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:

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ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 28658, issued to Respondent Nikunj C. Patel is surrendered and accepted by the Board of Pharmacy.

13. 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.

14. Respondent shall cause to be delivered to the Board both his wall and pocket license certificate on or before the effective date of the Decision and Order.

15. The surrender of Respondent's Pharmacy Technician License 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.

16. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, Respondent must wait at least three years from the effective date of this Order. The Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2716 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

17. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $1,000.00 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Allen D. West, Esq. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of

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License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____.

_____
NIKUNJ C. PATEL
Respondent

DATED: _____.

_____
ALLEN D. WEST, Esq.
Attorney for Respondent

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: _____.

BILL LOCKYER, Attorney General
of the State of California

_____
STEPHEN S. HANDIN
Supervising Deputy Attorney General

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: NIKUNJ C. PATEL 313 W. 64th Street Inglewood, CA 90302 Pharmacy Technician License No. TCH 28658 Respondent.	Case No. 2716 OAH No. L-2004060131

DECISION AND ORDER

Pursuant to the Agreement of the Parties, as recited in the transcript of the October 4, 2004, proceedings, 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 February 10, 2005.

It is so ORDERED January 11, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2716

BILL LOCKYER, Attorney General
of the State of California
STEPHEN S. HANDIN, State Bar No. 71100
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California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
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Attorneys for Complainant

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

In the Matter of the Accusation Against: NIKUNJ C. PATEL 313 W. 64th Street Inglewood, CA 90302 Pharmacy Technician License No. TCH 28658 Respondent.	Case No. 2716 **ACCUSATION**

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 (Board).

2. On or about March 12, 1999, the Board issued Pharmacy Technician License No. TCH 28658 to Nikunj C. Patel (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, 2004, unless renewed.

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JURISDICTION

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

4. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 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."

6. Section 4060 states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian."

7. 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."

8. Section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . 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."

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

a. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057 and is categorized as a dangerous drug pursuant to section 4022 of the Code.

b. Restoril (temazepam) is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, and is categorized as a dangerous drug pursuant to section 4022 of the Code.

c. Soma (carisoprodol) is categorized as a dangerous drug pursuant to section 4022 of the Code.

d. Sonata (zaleplon) is categorized as a dangerous drug pursuant to section 4022 of the Code.

e. Valium (diazepam), is a Schedule IV controlled substance as designated by Health and Safety Code section 11057 and is categorized as a dangerous drug pursuant to section 4022 of the Code.

f. Xenical (orlistat) is categorized as a dangerous drug pursuant to section 4022 of the Code.

g. Zoloft (setraline hydrochloride) is categorized as a dangerous drug pursuant to section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

10. Respondent is subject to disciplinary action under sections 4300 and 4301(l) on the grounds of unprofessional conduct as defined in Title 16, California Code of Regulations, section 1770 in that Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician, as follows:

a. On or about March 1, 2002, Respondent was convicted on a plea of guilty, of one count of violating Penal Code section 487(a), (grand theft of property over $400), a felony, and of one count of violating Health and Safety Code section 11377(a) (possession of a controlled substance) in the Superior Court of Los Angeles, Southwest Judicial District, Case No. YA050136, entitled *The People of the State of California* v. *Nikunj Patel.* The circumstances surrounding the conviction are that on or about November 16, 2001, Respondent stole approximately $969 worth of merchandise from the Robinson's May department store in Torrance, California. During a search of Respondent's vehicle, in addition to department store

merchandise, Torrance police officers found nine bottles of prescription drugs, including Valium, Sonata, Alprazolam, Temazepam, Xenical, Restoril, Zoloft, and Soma. Respondent admitted to one of the arresting officers that he had stolen the drugs from his employer, Albertson's Pharmacy.

b. On or about May 21, 2002, Respondent was convicted on a plea of nolo contendere, of one count of violating Penal Code section 484(a) (petty theft), a misdemeanor, in the Superior Court of Los Angeles, Southwest Judicial District, Case No. 1SB08682, entitled *The People of the State of California* v. *Nikunj Patel.* The circumstances surrounding the conviction are that on or about November 10, 2001, Respondent stole approximately $243.50 worth of merchandise (men's fragrance collections) from the Macy's department store located at 21600 Hawthorne Boulevard, in Torrance, California.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Acts)

11. Respondent is subject to disciplinary action under sections 4300 and 4301(f), in that Respondent stole the property of another, including dangerous drugs and controlled substances as more fully set forth above in paragraph 10.

THIRD CAUSE FOR DISCIPLINE

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

12. Respondent is subject to disciplinary action under sections 4300 and 4301(j) on the grounds of unprofessional conduct for violating section 4060 in that Respondent possessed dangerous drugs/controlled substances without a prescription as more fully set forth above in paragraphs 10 and 11.

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 License No. TCH 28658, issued to Nikunj C. Patel;

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2. Ordering Nikunj C. Patel 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: 4/20/04

P. F. Harris

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

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