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ORIGINAL

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

In the Matter of the Accusation Against: **TERENCE SCOTT CLARK** 7529 Guildwood Street Sacramento, California 95822 Pharmacy Technician Registration No. TCH 40302 Respondent.	Case No. 2807 OAH Case No. N2006020172 **STIPULATION FOR SURRENDER, INVALIDATION AND REVOCATION OF PHARMACY TECHNICIAN REGISTRATION, DECISION AND ORDER**

IT IS STIPULATED by and between Respondent **TERENCE SCOTT CLARK,** Pharmacy Technician Registration Number TCH 40302, (hereinafter referred to as "Respondent"), and the Board of Pharmacy, Department of Consumer Affairs, State of California, that:

1. Respondent is a licensee of the Board of Pharmacy (hereinafter referred to as the "Board") and has been duly served with the Accusation on file and pending in Case No. 2814, and accompanying documents. A copy of the Accusation is attached hereto as Exhibit "1" and is incorporated by reference as though set forth at length herein. Respondent is subject to the

jurisdiction of the Board of Pharmacy in regard to the matters alleged in the Accusation.

2. Complainant Patricia F. Harris initiated the filing of the Accusation solely in her official capacity as the Executive Officer of the Board.

3. Respondent was issued Pharmacy Technician Registration Number TCH 39716 on or about January 2, 2002, which Pharmacy Registration will expire on July 31, 2006, unless renewed.

4. Complainant in this matter is represented by Bill Lockyer, Attorney General of the State of California, by and through Robert Browning Miller, Deputy Attorney General. Respondent is representing himself.

5. Even though Respondent is representing himself, Respondent understands nature of the charges and allegations concerning violations of the Business and Professions Code and the Health and Safety Code as stated in the Accusation and his rights under the Administrative Procedure Act.

6. The Accusation, together with all other statutorily required documents, was duly served on the Respondent, and the Respondent filed a Notice of Defense in a timely manner.

WAIVER

7. Respondent understands the nature of the charges alleged against him in the Accusation. Further, the Respondent understands that the charges stated in the Accusation constitute sufficient cause for disciplining the registration license set forth in the Accusation. The Respondent is fully aware of his right to a hearing on the charges alleged in the Accusation, his right to confront and cross-examine witnesses, his right to present evidence in mitigation or on his behalf, as well as his right to petition for reconsideration, appeal, and any and all other rights which may be accorded Respondent under the California Administrative Procedure Act and, with these provisions in mind, Respondent freely, voluntarily, and irrevocably waives and gives up such rights.

ADMISSIONS

8. Respondent admit that the charges and allegations stated in the Accusation, if proven at a hearing, constitute cause for imposing discipline on Respondent Pharmacy

Technician Registration. Should Respondent ever come before the Board, or any other government agency responsible for the registering or licensing pharmacy technicians, Respondent stipulates that all the charges set forth in the attached Accusation shall be deemed to be admitted as facts without the necessity of further proof.

9. **The foregoing admissions are made only for the purpose of this proceeding and any subsequent proceedings between Respondent and the Board, the Department of Consumer Affairs or the State of California and any of its agencies, and any other government agency responsible for licensing pharmacy technicians.** This Stipulation shall not be used or admissible for any purpose in any other civil or criminal proceedings. Further, this Stipulation shall have no force or effect in any other case or proceeding where the Board is not a party thereto. In the event this Stipulation is not adopted by the Board, it shall be null and void, and may not be used by the parties or any other person for any purpose.

10. Respondent agrees that the Stipulation constitutes sufficient grounds for the Board's imposition of a penalty against the Pharmacy Technician Registration heretofore issued to Respondent.

11. It is understood by Respondent that, in deciding whether to adopt this Stipulation, the Board may receive oral and written communications from the staff of the Department of Consumer Affairs, Board of Pharmacy and the Office of the Attorney General. Communications pursuant to this paragraph shall not disqualify the Board or other persons from future participation in this or any other matter affecting Respondent.

12. The Board has incurred investigation and prosecution costs in this matter in the amount of three thousand six hundred dollars and no cents ($3,600.00). Had this matter gone to a Hearing, the Board, if successful in establishing the allegations set forth in the Accusation, could have recover said costs from Respondent, pursuant to the authority of Business and Professions Code section 125.3. The Board agrees to waive recovery of all investigation and prosecution costs incurred herein, except in eventuality that should Respondent apply for any license issued by the Department of Consumer Affairs, such costs shall be immediately due and owing to the Department of Consumer Affairs.

WHEREFORE, it is stipulated that the Board of Pharmacy, Department of Consumer Affairs may issue the following Decision and Order:

DECISION AND ORDER

1. **INVALIDATION AND REVOCATION OF PHARMACY TECHNICIAN REGISTRATION** - Pharmacy Technician Registration Number TCH 39716 issued to TERENCE SCOTT CLARK, is hereby permanently invalidated and revoked.

2. **SURRENDER OF LICENSE AFTER INVALIDATION** - Upon the effective date of permanent invalidation and revocation, Respondent shall surrender certificate of registration and any and all other evidence of licensure, registration and certification to the Board at its office located at 1625 North Market Boulevard, Suite N-219, Sacramento, California, unless such has already occurred as a result of *People v. Terence Scott Clark,* Sacramento Superior Court Case No. 04-F07484). Said registration and any other evidence of licensor or registration shall be surrendered to a designated Bureau representative.

3. **WAIVER OF COSTS -** Costs as set forth in paragraph 12 are waived, except in the event that Respondents, collectively or individually, apply at some future date for a license issued by the Department of Consumer Affairs, such costs will be immediately due and owing.

4. **EFFECT OF STIPULATION -** This Stipulation concludes all investigation and enforcement proceedings by the Board regarding the Respondent as to allegations contained in the Accusation.

IT IS FURTHER STIPULATED AND AGREED that the terms of this Stipulation shall be subject to the acceptance of the Board of Pharmacy, Department of Consumer Affairs. If the Board fails to adopt this Stipulation as the final decision in this matter, it shall be of no force or effect for either party, and the matter will be regularly set for hearing.

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ACCEPTANCE OF STIPULATION

I hereby state that I have read and that I understand this document. I understand that I have certain rights under the California Administrative Procedure Act and the laws and regulations of the State of California in regard to this matter, and I knowingly and intelligently waive those rights.

I agree that a signed facsimile (FAX) of this document shall be as binding as an original signed copy. I fully understand all of, and agree to be bound by, the terms of this document.

Dated: 3-26-06

TERENCE SCOTT CLARK

ACKNOWLEDGMENT

The foregoing Stipulation is respectfully submitted to the Board of Pharmacy, Department of Consumer Affairs for consideration.

Dated: MARCH 21, 2006

BILL LOCKYER, Attorney General
of the State of California

By: ROBERT BROWNING MILLER
Deputy Attorney General

Attorneys for Complainant

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ORDER

The above Stipulation has been adopted and shall become the Final Decision of the Board of Pharmacy of the Department of Consumer Affairs of the State of California.

This decision shall become effective on June 30, 2006.

It is so ORDERED on May 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

EXHIBIT 1

ACCUSATION IN CASE NO. 2807

ORIGINAL

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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: **TERENCE SCOTT CLARK** 7529 Guildwood Street Sacramento, California 95822 Pharmacy Technician Registration No. TCH 40302 Respondent.	Case No. 2807 **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 ("Board"), Department of Consumer Affairs.

2. On or about January 2, 2002, the Board issued Pharmacy Technician Registration Number TCH 40302 to Terence Scott Clark ("Respondent"). On September 21, 2004, in the criminal proceeding titled *People v. Terence Scott Clark* (Sacramento Sup. Ct., 2004, No. 04-F07484), Respondent surrendered his pharmacy technician registration to the court based upon an order pursuant to Penal Code section 23. Respondent's Pharmacy Technician Registration will expire on July 31, 2006, unless renewed.

STATUTORY PROVISIONS

3. Business and Professions Code ("Bus. & Prof. Code") section 4202, subdivision (d), states that the Board may suspend or revoke a registration issued pursuant to this section on any ground specified in Section 4301.

4. Bus. & Prof. Code section 4300 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 . . .

5. Bus. & Prof. Code section 4301 states, in pertinent part:

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 . . .

6. Bus. & Prof. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, 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.

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(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. Bus. & Prof. Code section 118, subdivision (b), states:

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.

8. Health and Safety Code ("Health & Saf. Code") 11173, subdivision (a), states:

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

9. Health & Saf. Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

10. Health & Saf. Code section 11351 states:

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment in the state prison for two, three, or four years.

11. Health & Saf. Code section 11357, subdivision (b), states, in pertinent part, that except as authorized by law, every person who possesses not more than 28.5 grams of

marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100).

Cost Recovery

12. Bus. & Prof. Code section 125.3 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.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

13. "Vicodin", a combination drug containing hydrocodone 5 mg and APAP, is a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4), and is a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

14. "Marijuana" is a Schedule I controlled substance as designated by Health & Safety Code section 11054, subdivision (d)(13).

FACTUAL BACKGROUND

15. From approximately 2003 to August 2004, Respondent was employed as a pharmacy technician at Broadway Long Term Care Pharmacy, Inc. (hereinafter "Broadway Pharmacy"), located in Sacramento, California.

16. On or about July 9, 2004, David Carroll, Pharmacist-In-Charge of Broadway Pharmacy, reported to the California Department of Justice (CA DOJ) that one or more of their employees had stolen hydrocodone tablets from within the pharmacy.

17. From July 23, 2004, through August 3, 2004, CA DOJ, the California Bureau of Narcotic Enforcement ("BNE"), and the U.S. Drug Enforcement Agency ("DEA") conducted an investigation into the diversion of controlled substances from Broadway Pharmacy.

18. On August 3, 2004, representatives from DEA, BNE, and the California Department of Health and Human Services interviewed Respondent. Respondent admitted that he had stolen approximately 300 to 500 tablets of controlled substances, usually Vicodin, out of the pharmacy three to four times per month over a one year period, including 30 Vicodin tablets

in May 2004. Respondent also admitted that he assisted another pharmacy technician, Juan Evans ("Evans"), in stealing hydrocodone in exchange for which he received marijuana. Respondent stated that he and Evans worked together to steal Vicodin and that Respondent sold the Vicodin to a female named "Betty" for cash. Respondent consented to a search of his residence and was found in possession of eleven 7.5 tablets of hydrocodone and eleven grams of marijuana. Respondent was subsequently charged with violating Health & Saf. Code sections 11351, 11173, subdivision (a), 11350, subdivision (a), and 11357, subdivision (b).

FIRST CAUSE FOR DISCIPLINE

(Violations of State Laws Regulating Controlled Substances)

19. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct. On and between May 1, 2004, and August 3, 2004, while employed as a pharmacist technician at Broadway Pharmacy located in Sacramento, California, Respondent violated the following state laws regulating controlled substances:

a. **Health & Saf. Code Section 11351:** On and between May 1, 2004, and July 30, 2004, Respondent unlawfully possessed for sale various quantities of hydrocodone, a controlled substance.

b. **Health & Saf. Code section 11173, subdivision (a):** On and between May 1, 2004, and July 30, 2004, Respondent unlawfully obtained and attempted to obtain hydrocodone, a controlled substance, and procured and attempted to procure the administration of and prescription for hydrocodone by fraud, deceit and misrepresentation.

c. **Health & Saf. Code section 11350, subdivision (a):** On or about August 3, 2004, Respondent unlawfully had in his possession hydrocodone, a controlled substance.

d. **Health & Saf. Code section 11357, subdivision (b):** On or about August 3, 2004, Respondent unlawfully possessed not more than 28.5 grams of marijuana.

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SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

20. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (f), on the grounds of unprofessional conduct in that he committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in paragraph 21 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 Number TCH 40302, issued to Terence Scott Clark;

2. Ordering Terence Scott Clark 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: 12/13/04

P. F. Harris

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

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