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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: NINA B. SPEARS 5016 Countryridge Court Salida, California 95368 Pharmacy Technician Registration No. TCH 3121 Respondent.	Case No. 2809 **STIPULATION FOR REVOCATION**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings 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 Kent D. Harris, Deputy Attorney General.

2. Nina B. Spears (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about January 11, 1993, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 3121 to Nina B. Spears (Respondent). The Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 2809 and will expire on October 31, 2006, unless renewed.

JURISDICTION

4. Accusation No. 2809 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 March 29, 2005. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2809 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. 2809. Respondent has also carefully read, and understands the effects of this Stipulation for Revocation.

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. 2809.

9. Respondent agrees that her Pharmacy Technician Registration is subject to revocation and she agrees to be bound by the Board's Order below.

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 for revocation,

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 Stipulation for Revocation 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 Stipulation for Revocation 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 3121 issued to Respondent Nina B. Spears is revoked. Respondent may not seek reinstatement or re-application for a period of three (3) years after the effective date of this decision. Upon any re-application or petition for reinstatement respondent must comply with the following:

1. Respondent must meet all of the requirements for licensure at that time, including taking and passing the Pharmacy Technician Certification Examination.

2. Respondent must meet the rehabilitation criteria set forth in the Board's guidelines.

3. Respondent must pay the reasonable costs of investigation and prosecution in this case in the amount of $2,800.00.

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ACCEPTANCE

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

DATED: 7/12/05.

Nina B. Spears

NINA B. SPEARS
Respondent

ENDORSEMENT

The foregoing Stipulation for Revocation and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 7/25/05.

BILL LOCKYER, Attorney General
of the State of California

Kent Harris

KENT D. HARRIS
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: 03583110-SA2004103545
Spears stipulation for Revocation.wpd

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

In the Matter of the Accusation Against: NINA B. SPEARS 5016 Countryridge Court Salida, California 95368 Pharmacy Technician Registration No. TCH 3121 Respondent.	Case No. 2809

DECISION AND ORDER

The attached Stipulation for Revocation and Disciplinary 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 September 28, 2005.

It is so ORDERED August 29, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2809

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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: **NINA B. SPEARS** 5016 Countryridge Court Salida, California 95368 Pharmacy Technician Registration No. TCH 3121 Respondent.	Case No. 2809 **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 ("Board"), Department of Consumer Affairs.

2. On or about January 11, 1993, the Board issued Pharmacy Technician Registration Number TCH 3121 to Nina B. Spears ("Respondent"). The pharmacy technician registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2006, unless renewed.

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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 4060 states, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

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7. Health and Safety 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.

Cost Recovery

8. 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 SUBSTANCE AT ISSUE

9. "Tylenol (Acetaminophen) with codeine" is a Schedule III controlled substance and narcotic drug as designated by Health & Safety Code section 11056, subdivision (e)(2).

10. "Qualitest", a brand of Tylenol #3 or Tylenol with codeine #3, is a combination drug containing 30 mg of codeine and acetaminophen and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(2).

11. "Vicodin", a combination drug containing hydrocodone bitartrate and acetaminophen, is a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

FACTUAL BACKGROUND

12. On and between March 24, 2003, and February 26, 2004, Respondent was employed as a pharmacy technician at Emanuel Medical Center (hereinafter "Emanuel" or "the medical center") located in Turlock, California.

13. On or about February 18, 2004, Respondent diverted an unknown quantity of Qualitest APAP 300 mg/codeine 30 mg tablets from the medical center pharmacy.

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14. On May 19, 2004, Respondent provided a written declaration to Board Inspector, Rick Iknoian. Respondent admitted that 2 or 3 weeks prior to being terminated from her employment at the medical center (Respondent was terminated on February 26, 2004), she took approximately 4 or 5 tablets of Vicodin or Tylenol with codeine from the medical center pharmacy. Respondent poured some Vicodin or Tylenol with codeine tablets into her left hand while both of her hands were gloved. Respondent stated that she pulled off the gloves while the drugs were still in her left hand, and that approximately 4 or 5 of the tablets were still in the wadded-up gloves. Respondent put the gloves, with the drugs intact, into the waste bin where the used injectable bottles were kept.

FIRST CAUSE FOR DISCIPLINE

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

15. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows:

a. On or between February 5, 2004, and February 12, 2004, while on duty as a pharmacy technician at Emanuel Medical Center in Turlock, California, Respondent dishonestly or fraudulently appropriated or diverted approximately 4 to 5 Vicodin or Tylenol with codeine tablets, controlled substances, belonging to the medical center pharmacy.

b. On or about February 18, 2004, while on duty as a pharmacy technician at Emanuel Medical Center in Turlock, California, Respondent dishonestly or fraudulently appropriated or diverted an unknown quantity of Qualitest APAP 300 mg/codeine 30 mg tablets, a controlled substance, belonging to the medical center pharmacy.

SECOND CAUSE FOR DISCIPLINE

(Violations of State Laws Regulating Controlled Substances)

16. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct. On and between February 5, 2004, and February 18, 2004, while on duty as a pharmacy technician at Emanuel

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Medical Center in Turlock, California, Respondent violated the following state laws regulating controlled substances:

Bus. & Prof. Code section 4060:

a. On or between February 5, 2004, and February 12, 2004, Respondent possessed 4 or 5 Vicodin or Tylenol with codeine tablets, controlled substances, without lawful prescriptions for the medications from a physician, dentist, podiatrist, optometrist, or veterinarian.

b. On or about February 18, 2004, Respondent possessed an unknown quantity of Qualitest APAP 300 mg/codeine 30 mg tablets, a controlled substance, without a lawful prescription for the medication from a physician, dentist, podiatrist, optometrist, or veterinarian.

Health and Safety Code section 11350, subdivision (a):

c. On or between February 5, 2004, and February 12, 2004, Respondent unlawfully had in her possession 4 or 5 Vicodin or Tylenol with codeine tablets, controlled substances.

d. On or about February 18, 2004, Respondent unlawfully had in her possession an unknown quantity of Qualitest APAP 300 mg/codeine 30 mg tablets, a controlled substance.

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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 3121, issued to Nina B. Spears;

2. Ordering Nina B. Spears 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: 3/23/05

P. F. Harris

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

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