

ORIGINAL

1 BILL LOCKYER, Attorney General
of the State of California
2 ROBERT BROWNING MILLER, State Bar No. 57819
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 322-0253
Facsimile: (916) 327-8643

6 **Attorneys for Complainant**

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:
14 **JUAN LEON EVANS**
1299 Antelope Creek Drive
15 Roseville, California 95678
16 Pharmacy Technician Registration No. TCH 39716
17 Respondent.

Case No. 2814
OAH Case No. N2006020173

18 **STIPULATION FOR**
19 **SURRENDER,**
20 **INVALIDATION AND**
21 **REVOCAATION OF**
22 **PHARMACY TECHNICIAN**
23 **REGISTRATION, DECISION**
24 **AND ORDER**

25 IT IS STIPULATED by and between Respondent **JUAN LEON EVANS**, Pharmacy
26 Technician Registration Number TCH 39716, (hereinafter referred to as "Respondent"), and the
27 Board of Pharmacy, Department of Consumer Affairs, State of California, that:

28 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.

1 government agency responsible for the registering or licensing pharmacy technicians,
2 Respondent stipulates that all the charges set forth in the attached Accusation shall be deemed
3 to be admitted as facts without the necessity of further proof.

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

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

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

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

28 ///

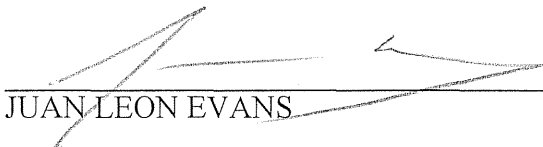
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: 04-11-06

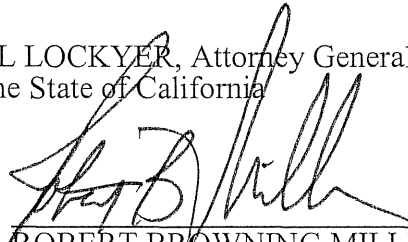


JUAN LEON EVANS

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

///

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1
ACCUSATION IN CASE NO. 2814

ORIGINAL

1 BILL LOCKYER, Attorney General
of the State of California
2 ROBERT B. MILLER, State Bar No. 57819
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 322-0253
Facsimile: (916) 327-8643
6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2814

13 **JUAN LEON EVANS**
1299 Antelope Creek Drive
14 Roseville, CA 95678
Pharmacy Technician Registration
No. TCH 39716

ACCUSATION

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about October 1, 2001, the Board of Pharmacy ("Board") issued
22 Pharmacy Technician Registration Number TCH 39716 to Juan Leon Evans ("Respondent").
23 Respondent's registration will expire on October 31, 2005, unless renewed.

24 **STATUTORY PROVISIONS**

25 3. Section 118, subdivision (b) of the Business and Professions Code
26 ("Code") provides:

27 "(b) The suspension, expiration, or forfeiture by operation
28 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

1 order of a court of law, or its surrender without the written consent
2 of the board, shall not, during any period in which it may be
3 renewed, restored, reissued, or reinstated, deprive the board of its
4 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 4. Code section 477, subdivision (b), provides:

6 “(b) ‘License’ includes certificate, registration or other
7 means to engage in a business or profession regulated by this
code.”

8 5. Code section 490 provides:

9 “A board may suspend or revoke a license on the ground
10 that the licensee has been convicted of a crime, if the crime is
11 substantially related to the qualifications, functions, or duties of the
12 business or profession for which the license was issued. A
13 conviction within the meaning of this section means a plea or
14 verdict of guilty or a conviction following a plea of nolo
15 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.”

16 6. Code section 4022 provides, in pertinent part:

17 “‘Dangerous drug’ means any drug or device unsafe for
18 self-use, except veterinary drugs that are labeled as such, and
includes the following:

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

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

23 7. Code section 4026 provides that the term “furnish” means to supply by any
24 means, by sale or otherwise.

25 8. Code section 4059, subdivision (a), provides:

26 “(a) A person may not furnish any dangerous drug, except
27 upon the prescription of a physician, dentist, podiatrist,
28 optometrist, or veterinarian. A person may not furnish any
dangerous device, except upon the prescription of a physician,
dentist, podiatrist, optometrist, or veterinarian.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Code section 4060 provides, in pertinent part:

“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.”

10. Code section 4300 provides, 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.”

11. Code section 4301 provides, 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.
- (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

///

1 statutes of this state regulating controlled substances or dangerous
2 drugs shall be conclusive evidence of unprofessional conduct.

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

8 12. Health and Safety Code section 11350, subdivision (a), provides:

9 “(a) Except as otherwise provided in this division, every
10 person who possesses (1) any controlled substance specified in
11 subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section
12 11054, specified in paragraph (14), (15), or (20) of subdivision (d)
13 of Section 11054, or specified in subdivision (b) or (c) of Section
14 11055, or specified in subdivision (h) of Section 11056, or (2) any
15 controlled substance classified in Schedule III, IV, or V which
16 is a narcotic drug, unless upon the written prescription of a
17 physician, dentist, podiatrist, or veterinarian licensed to practice in
18 this state, shall be punished by imprisonment in the state prison.”

19 13. Health and Safety Code section 11351 provides:

20 “Except as otherwise provided in this division, every
21 person who possesses for sale or purchases for purposes of sale (1)
22 any controlled substance specified in subdivision (b), (c), or (e) of
23 Section 11054, specified in paragraph (14), (15), or (20) of
24 subdivision (d) of Section 11054, or specified in subdivision (b) or
25 (c) of Section 11055, or specified in subdivision (h) of Section
26 11056, or (2) any controlled substance classified in Schedule III,
27 IV, or V which is a narcotic drug, shall be punished by
28 imprisonment in the state prison for two, three, or four years.”

13. California Code of Regulations, title 16, section 1770, provides:

“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.”

Cost Recovery

15. Code section 125.3 provides that the Board may request the administrative
law judge to direct a licentiate found to have committed a violation or violations of the licensing

///

1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 **Dangerous Dugs/Controlled Substances**

4 16. "Ambien (zolpidem)" is a Schedule IV controlled substance as designated
5 by Health and Safety Code section 11057, subdivision (d)(32), and a dangerous drug within the
6 meaning of section 4022 of the Code.

7 17. "Diazepam" is a Schedule IV controlled substance as designated by Health
8 and Safety Code section 11057, subdivision (d)(9), and a dangerous drug within the meaning of
9 section 4022 of the Code.

10 18. "Hydrocodone with acetaminophen" is a Schedule III controlled
11 substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and
12 a dangerous drug within the meaning of section 4022 of the Code.

13 19. "Valium" is a brand of diazepam, is a Schedule IV controlled substance as
14 designated by Health and Safety Code section 11057, subdivision (d)(9), and a dangerous drug
15 within the meaning of section 4022 of the Code.

16 20. "Vicodin" is a compound consisting of 500 mg. acetaminophen per tablet,
17 and 5 mg. hydrocodone bitartrate, also known as dihydrocodeinone, a Schedule III controlled
18 substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and a
19 dangerous drug within the meaning of section 4022 of the Code.

20 **Background**

21 21. During May 2004, Respondent began stealing controlled substances
22 and dangerous drugs from Broadway Long Term Care Pharmacy, Inc., located in Sacramento,
23 California, where he was employed as a licensed pharmacy technician. Respondent would
24 then deliver those stolen substances to R. A., exchanging those substances for cash. Respondent
25 last stole controlled substances and dangerous drugs from Broadway Long Term Care Pharmacy,
26 Inc. on July 28, 2004.

27 ///

28 ///

1 22. During May 2004, Respondent stole 500 Hydrocodone/APAP 7.5/500mg.
2 tablets from Broadway Long Term Care Pharmacy, Inc., while on duty as a licensed pharmacy
3 technician, by concealing that substance within a backpack and removing it from the pharmacy.
4 Approximately one-week later, Respondent delivered that substance to R. A. in exchange for
5 \$200.

6 23. During June 2004, Respondent stole 100 Diazepam 10mg. tablets,
7 approximately 300 or 400 Ambien 10mg. tablets, and 200 Hydrocodone/APAP 10/650 tablets
8 from Broadway Long Term Care Pharmacy, Inc., while on duty as a licensed pharmacy
9 technician by concealing those substances within a backpack and removing them from the
10 pharmacy. Respondent later delivered the stolen substances to R. A. in exchange for cash.

11 24. On or about July 28, 2004, Respondent stole one bottle of Hydrocodone
12 10/325mg., and two bottles of Hydrocodone 10/650mg., from Broadway Long Term Care
13 Pharmacy, Inc., while on duty as a licensed pharmacy technician, by placing those substances
14 within a backpack and removing them from the pharmacy. Respondent later delivered those
15 substances to R. A. in exchange for cash.

16 25. Respondent estimates that he received approximately \$1,100 in payments
17 from R.A. in exchange for the controlled substances and dangerous drugs stolen from Broadway
18 Long Term Care Pharmacy, Inc. between May and July 2004. Respondent received his last
19 payment in exchange for stolen controlled substances and dangerous drugs of \$410 from R. A.
20 on July 27, 2004.

21 26. On or about July 30, 2004, following the initiation of a criminal
22 investigation into the theft of drugs from Broadway Long Term Care Pharmacy, Inc., Respondent
23 was interviewed by officers of the California Bureau of Narcotic Enforcement (BNE) and an
24 agent of the United States Drug Enforcement Administration (DEA). During that interview,
25 Respondent admitted that he had not held a valid prescription for any of the substances stolen
26 from Broadway Long Term Care Pharmacy, Inc., and that he believed he could make money by
27 stealing and then selling controlled substances and dangerous drugs to R. A., who Respondent
28 knew would later sell those substances to others. At the conclusion of the interview, Respondent

1 was arrested on suspicion of possession of controlled substances, possession of controlled
2 substances for sale, and burglary.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Crime)**

5 27. Respondent's registration is subject to disciplinary action under Code
6 sections 490 and 4301, subdivision (l), for acts of unprofessional conduct in that, as more
7 particularly set forth below, Respondent was convicted of substantially related crimes:

8 a. On or about October 14, 2004, in the case entitled: *People v. Juan*
9 *Leon Evans*, (Super. Ct. Sac. County, 2004, No.04F08034), Respondent was convicted by the
10 court upon his plea of nolo contendere of violating Health and Safety Code section 11351
11 (possession of a controlled substance for sale and purchase) (a felony), and Penal Code section
12 504 (fraudulent appropriation) (a misdemeanor), crimes substantially related to the
13 qualifications, functions or duties of a licensee within the meaning of California Code of
14 Regulations, title 16, section 1770, in that the conviction evidences a present or potential
15 unfitness on the part of Respondent to perform the functions authorized by that license in a
16 manner consistent with the public health, safety, or welfare.

17 b. As set forth in the criminal complaint, the circumstances of the
18 conviction are:

19 1. On or about and between May 1, 2004, and July 30, 2004,
20 Respondent unlawfully possessed Hydrocodone for sale and purchase; and,

21 2. On or about and between May 1, 2004, and July 30, 2004,
22 Respondent unlawfully and fraudulently appropriated property of a value exceeding Four
23 Hundred Dollars (\$400), with a fraudulent intent to appropriate it to a use and purpose contrary
24 to law.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)**

27 28. Respondent's registration is subject to disciplinary action under Code
28 section 4301, subdivision (j), for acts of unprofessional conduct. Specifically, in and during

1 May 2004, until on or about July 28, 2004, while on-duty as a licensed pharmacy technician,
2 Respondent stole and then furnished to R. A. for sale, various controlled substances and
3 dangerous drugs consisting of Hydrocodone, Ambien, and Diazepam, by concealing those
4 controlled substances and dangerous drugs within a backpack and removing them from
5 Broadway Long Term Care Pharmacy, Inc., located in Sacramento, California, in violation of
6 Health and Safety Code sections 11350, subdivision (a) and 11351.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Commission of an Act Involving Moral Turpitude,**
9 **Dishonesty, Fraud, Deceit, or Corruption)**

10 29. Respondent's registration is subject to disciplinary action under Code
11 section 4301, subdivision (f), for acts of unprofessional conduct in that, as more particularly
12 set forth under paragraph 28 above, Respondent committed acts involving moral turpitude,
13 dishonesty, fraud, deceit, or corruption.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Violating Provisions Governing Pharmacy)**

16 30. Respondent's registration is subject to disciplinary action under Code
17 section 4301, subdivision (o), for violation of state laws governing pharmacy, as more
18 particularly set forth above under paragraphs 27 through 29.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing the Board issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 39716 issued to Juan Leon Evans;
2. Ordering Juan Leon Evans to pay the reasonable costs incurred by the Board in the investigation and enforcement of this case pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/19/05



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