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

In the Matter of the Accusation Against: JEANNIE KIM WILSON 400 Terriwood Avenue Bakersfield, CA 93308 Pharmacy Technician License No. TCH 731 Respondent.	Case No. 2837 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 15, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2837 against Jeannie Kim Wilson (Respondent) before the Board of Pharmacy.

2. On or about October 19, 1992, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 731 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

3. On or about April 20, 2005, Valerie Villegas, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2837, 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 400 Terriwood Avenue, Bakersfield, CA 93308. A copy of the Accusation is attached as exhibit A, and is 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. 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."

6. 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. 2837.

7. 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."

8. 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 exhibit A and finds that the allegations in Accusation No. 2837 are true.

9. The total costs for investigation and enforcement are $3,572.25 as of May 31, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jeannie Kim Wilson has subjected her Pharmacy Technician License No. TCH 731 to discipline.

2. A copy of the Accusation is attached.

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

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

a. Business and Professions Code sections 4301, subdivision (k) and (l) and 490 - the conviction of a crime substantially related to the qualifications, functions and duties of a pharmacy technician.

b. Business and Professions Code section 4301, subdivision (j), and Health and Safety Code section 11173, subdivision (a) - obtained controlled substances.

c. Business and Professions Code section 4301, subdivision (h) and Health and Safety Code section 11170 - administered controlled substances to herself.

d. Business and Professions Code sections 4301, subdivision (j), and 4327 - under the influence of a controlled substance while on duty.

ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 731, heretofore issued to Respondent Jeannie Kim Wilson, 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 July 28, 2005.

It is so ORDERED June 28, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY W. GOLDENBERG
Board President

Attachment:

Exhibit A: Accusation No.2837

DOJ docket number:03583110-LA2004602582
50042755.2.wpd

Exhibit A

Accusation No. 2837

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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:	Case No. 2837
JEANNIE KIM WILSON 400 Terriwood Avenue Bakersfield, CA 93308	**ACCUSATION**
Pharmacy Technician License No. TCH 731 Respondent.	

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.

2. On or about October 19, 1992, the Board of Pharmacy issued Pharmacy Technician License No. TCH 731 to Jeannie Kim Wilson (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

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 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

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.

. . . .

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

. . . .

"(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.

. . . .

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

6. Section 4060 of the Code states:

"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. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices."

7. Business and Professions Code section 4327 states:

"Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

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. Health and Safety Code section 11170 provides: "no person shall prescribe, administer, or furnish a controlled substance for himself."

10. Health and Safety Code section 11173, subdivision (a), states, in pertinent part: "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."

11. 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."

12. Business and Professions 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.

13. 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."

14. CONTROLLED SUBSTANCES

a. "Hydrocodone/Acetaminophen", generic for brand name Vicodin, Vicodin Es, Lorcet and Norco, is a Scheduled III controlled substance as designated in Health and Safety Code section 110556(e)(4) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

b. "Darvocet", a combination drug containing propoxyphene napsylate and acetaminophen, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(c)(2) and categorized as a dangerous drug pursuant to section 4022 of the Code.

c. "Hydromorphone", generic for the brand name Dilaudid, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(k) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

d. "Lorazepam", generic for the brand name Ativan, is a Scheduled IV controlled substance as designated by Health and Safety Code section 11057(d)(13) and is

categorized as a dangerous drug pursuant to section 4022 of the Code.

e. "Oxycodone", generic for the brand name OxyContin, is a schedule II control substance pursuant to Health and Safety Code section 11055(b)(1) and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022(c).

15. DANGEROUS DRUGS

"Viagra", brand name for sildenafil citrate, for the treatment of erectile dysfunction, is categorized as a dangerous drug pursuant to section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

16. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (k), (l) and (o) on the grounds of unprofessional conduct in conjunction with section 490 of the Code as defined in California Code of Regulations, title 16, section 1770 in that Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician. The circumstances are as follows:

a. On or about April 14, 2004, Respondent was convicted on a plea of nolo contendere to one count of violating Penal Code section 508, a felony (embezzlement), and one count of violating Health and Safety Code section 11350(A), a felony, (possession of controlled substance), in the Superior Court of California, Metropolitan Division, County of Kern, Case No. BF 105619, entitled *The People of the State of California v. Jeannie Kim Wilson.*

b. The circumstances surrounding the conviction are that from on and about February 2, 2004 to on and about March 2, 2004, Respondent took assorted controlled substances and prescription drugs from her place of employment without a prescription.

SECOND CAUSE FOR DISCIPLINE

(Obtain or Possess Controlled Substances)

17. Respondent is subject to disciplinary action under sections 4300 and 4301(f), (j) and (o) of the Code on the grounds of unprofessional conduct for violating section 4060 of the Code and Health and Safety Code section 11173, subdivision (a) in that Respondent obtained controlled substances by fraud, deceit, or misrepresentation, as follows:

a. From on or about June 2000 to on or about March 2, 2004, Respondent was employed as a pharmacy technician at Silver Spray Pharmacy. While so employed, on or about March 2, 2004, Respondent falsely obtained a controlled substance, OxyContin.

b. Additionally, Respondent possessed the following fraudulently obtained medication at her residence:

i. One unmarked bottle containing Lorazepam.

ii. One unmarked bottle containing seven (7) Viagra pills.

iii. One Qualitest bottle containing Darvocet capsules.

iv. Two bottles of 500-tablet bottles of Hydrocodone.

THIRD CAUSE FOR DISCIPLINE

(Administer Controlled Substances to Oneself)

18. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (h), (j) and (o) of the Code on the grounds of unprofessional conduct for violating Health and Safety Code section 11170 in that Respondent administered or furnished controlled substances to herself. The circumstances are as follows:

a. On or about March 2, 2004, at the request of the Kern County Sheriff's Department, Respondent submitted to a urine drug test. The screen test was positive for hydrocodone, hydromorphone and oxycodone.

b. On or about March 2, 2004, Respondent admitted that she had taken OxyContin the prior day, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Under the Influence While on Duty)

19. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (h), (j) and (o) of the Code on the grounds of unprofessional conduct for violating section 4327 in that Respondent was under the influence of a controlled substance while on duty as a pharmacy technician, as set forth in paragraph 18.

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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 License No. TCH 731, issued to Jeannie Kim Wilson.

2. Ordering Jeannie Kim Wilson 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: 4/15/05

P. F. Harris

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

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