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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: ELAINE J. FURLOW AKA ELAINE J. BERRIS aka Elaine J. Berris 6131 Sunfield Ave. Lakewood, CA 90712 and 13217 Crawford Street Cerritos, CA 90703 Pharmacy Technician License No. TCH 32599 Respondent.	Case No. 2906 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 20, 2006, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 2906 against ELAINE J. FURLOW aka ELAINE J. BERRIS (Respondent) before Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On or about March 15, 2000, the Board issued Pharmacy Technician License No. TCH 32599 to Respondent. On September 19, 2005, Respondent's Pharmacy Technician License was suspended by the Board pursuant to Business and Professions Code section 4311(a) [Incarceration following a Felony conviction]. Respondent's Pharmacy

Technician License was in full force and effect at all times relevant to the charges brought herein, expired on February 28, 2006, and has not been renewed.

3. On or about March 23, 2006, S. Reyes, an employee of the Department of Justice, served by Certified and First Class Mail, a copy of the Accusation No. 2906, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 (Accusation and Packet) to Respondent's address of record with the Board, which was and is 6131 Sunfield Ave, Lakewood, CA 90712. Additionally, the Accusation and Packet was served on Respondent care of the California Department of Corrections and Rehabilitation, Inmate Reg. No. X13703, P.O. Box 92, Chowchilla, CA 93610-0099. The Accusation and Packet was stamped "Refused" by the California Department of Corrections and Rehabilitation as Respondent had been paroled to the residence of 13217 Crawford Street, Cerritos, CA 90703. On or about April 11, 2006, S. Reyes, an employee of the Department of Justice, served by Certified and First Class Mail, a copy the Accusation and Packet to Respondent's address of 13217 Crawford Street, Cerritos, CA 90703, which was provided by the California Department of Corrections and Rehabilitation. The Accusation and Packet was received at this address on or about April 13, 2006, as indicated by the U.S. Postal Return Receipt. A copy of the Accusation and Declarations of Service are attached and incorporated as exhibit A. A copy of the documents related to the Accusation are 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."

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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. 2906.

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, finds that the allegations in Accusation No. 2906 are true.

9. The total costs for investigation and enforcement are $3,580.00 as of May 18, 2006.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent ELAINE J. FURLOW aka ELAINE J. BERRIS has subjected her Pharmacy Technician License No. TCH 32599 to discipline.

2. A copy of the Accusation and Declarations of Service are attached as exhibit A.

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

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

a. Business and Professions Code section 4301(l) [Unprofessional Conduct - Conviction of a Substantially Related Crime];

b. Business and Professions Code section 4301(f) [Unprofessional Conduct - Acts Involving Dishonesty, Fraud and Deceit];

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c. Business and Professions Code section 4301(g) [Unprofessional Conduct - Making or Signing a Document that Falsely Represents the Existence of Facts]; and,

d. Business and Professions Code sections 4301(h) and (j) [Unprofessional Conduct - Possession or Use of a Controlled Substance].

ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 32599, heretofore issued to Respondent ELAINE J. FURLOW aka ELAINE J. BERRIS, 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 August 24, 2006.

It is so ORDERED July 25, 2006

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

60144941.wpd
DOJ docket number:LA2005502381

Attachments:

Exhibit A: Accusation No.2906 and Declarations of Service

Exhibit A

Accusation No. 2906 and Declarations of Service

BILL LOCKYER, Attorney General
of the State of California
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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: ELAINE J. FURLOW a.k.a., ELAINE J. BERRIS 6131 Sunfield Ave. Lakewood, CA 90712 c/o California Department of Corrections and Rehabilitation Inmate Reg. No. X13703 P.O. Box 92 Chowchilla, California 93610-0099 Pharmacy Technician License No. TCH 32599 Respondent.	Case No. 2906 **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 March 15, 2000, the Board issued Pharmacy Technician License No. TCH 32599 to Elaine J. Furlow, also known as, Elaine J. Berris (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed. On September 19, 2005,

Respondent's Pharmacy Technician Registration was suspended by the Board pursuant to Business and Professions Code section 4311(a) [Incarceration after a felony conviction].

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 118, subdivision (b), of the Code provides that the suspension/expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Business and Professions Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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

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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.

. . . .

(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.

. . . ."

7. Section 4060 states:

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

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."

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 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."

10. 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."

11. Section 125.3 of the Code 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.

12. CONTROLLED SUBSTANCE

"Methamphetamine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2) and is categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490 of the Code, as defined in California Code of Regulations, title 16, section 1770 for unprofessional conduct, in that Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician, by reason of the following:

A. On or about July 28, 2005, Respondent was convicted by the court on a plea of nolo contendere to one count of violating Penal Code section 459, subdivision (a), a felony (second degree commercial burglary), one count of Penal Code section 475, subdivision (a), a felony (possession of a forged item), and one count of Vehicle Code section 2800.2, subdivision (a), a felony (eluding/fleeing from pursuing officer), in the Superior Court of California, County of Los Angeles, East Judicial District, Case No. KA071222-01, entitled *People v. Elaine Berris Furlow*.

B. The circumstances surrounding the conviction are that on or about June 16, 2005, Respondent entered a Von's Market, with the intent to commit larceny and a felony. Respondent knowingly forged, altered, counterfeited with the intent to pass a counterfeited check. Respondent willfully and unlawfully, while operating a motor vehicle, fled in an attempt to elude a pursuing peace officer's motor vehicle, and ultimately collided with a California

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Highway Patrol vehicle. Respondent drove her automobile in a willful and wanton disregard for the safety of persons and property.

C. On or about March 24, 2005, Respondent was convicted by the court on a plea of nolo contendere of one count of violating Penal Code section 470, subdivision (b), a misdemeanor (forgery), in the Superior Court of California, County of Los Angeles, Bellflower Judicial District, Case No. 5LC00585, entitled *People v. Elaine Berris Furlow.*

D. The circumstances surrounding the conviction are that on or about October 21, 2004, Respondent was in possession of stolen credit cards, social security cards, bank statements, payroll checks, and a forged check.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving, Dishonesty, Fraud or Deceit)

14. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that on or about October 21, 2004, November 4, 2004, and June 16, 2005, Respondent committed acts involving dishonesty, fraud or deceit, as more fully set forth above, in paragraph 13.

THIRD CAUSE FOR DISCIPLINE

(Making or Signing a Document That Falsely Represents the Existence of Facts)

15. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (g), on the grounds of unprofessional conduct, in that on or about June 16, 2005, Respondent knowingly forged, altered, and counterfeited with the intent to pass a counterfeited check, as more fully set forth above, in paragraph 13.

FOURTH CAUSE FOR DISCIPLINE

(Possession or Use of a Controlled Substance)

16. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (h) and (j), on the grounds of unprofessional conduct, for violating section 4060 of the Code and Health and Safety Code section 11173, subdivision (a), in that on or about November 4, 2004, Respondent possessed or used a controlled substance, to wit, Methamphetamine, without a prescription.

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 License No. TCH 32599, issued to Elaine J. Furlow, also known as, Elaine J. Berris;

2. Ordering Elaine J. Furlow to pay the Board 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: 3/20/06

P. F. Harris

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

LA2005502381

60125183.wpd

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

In the Matter of the Accusation Against: **Elaine J. Furlow aka Elaine J. Berris**
Agency Case No. 2906

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 23, 2006, I served the attached **Accusation, Statement To Respondent, Notice of Defense (2 copies) Request for Discovery and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement To Respondent, Notice of Defense (2 copies) Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 So. Spring St., Los Angeles, CA 90013, addressed as follows:

Elaine J. Furlow aka
Elaine J. Berris
6131 Sunfiled Avenue
Lakewood, CA 90712
Certified No. 7001 0360 0003 2715 7576

Elaine J. Furlow
aka Elaine J. Berris
c/o California Dept. of Corrections
and Rehabilitation
Inmate Reg. No. X13703
P. O. Box 92
Chowchilla, CA 93610-0099
Certified No. 7001 0360 0003 2715 7583

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 23, 2006, at Los Angeles, California.

S. REYES
Typed Name

S. Reyes
Signature

60133875.wpd

AMENDED DECLARATION OF SERVICE BY CERTIFIED MAIL & 1st CLASS MAIL
(Separate Mailings)

In the Matter of the Accusation Against: **Elaine J. Furlow aka Elaine J. Berris**
Agency Case No. **2906**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 11, 2006, I served the attached **Statement To Respondent, Accusation, Notice of Defense (2 copies) Request for Discovery and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Statement To Respondent, Accusation, Notice of Defense (2 copies) Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 So. Spring St., Los Angeles, CA 90013, addressed as follows:

Elaine J. Furlow
13217 Crawford Street
Cerritos, CA 90703

Certified No. 7001 0360 0003 2715 7637

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 11, 2006, at Los Angeles, California.

S. REYES	S. Reyes
Typed Name	Signature

60137656.wpd