BILL LOCKYER, Attorney General
of the State of California
LINDA K. SCHNEIDER, State Bar No.101336
Supervising Deputy Attorney General
RON ESPINOZA, State Bar No. 176908
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2100
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: DONAVAN EARL MIRANDA 9465 Wharton Rd. Santee, CA 92071 Pharmacy Technician No. TCH42373 Respondent.	Case No. 2968 **STIPULATED SURRENDER OF LICENSE AND ORDER**

In the interest of a prompt and speedy resolution of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender of License and Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Virginia K. Herold (Complainant) is the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, and Patricia F. Harris filed this action in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, on June 29, 2006. Complainant is represented in this matter by Bill Lockyer,

Attorney General of the State of California, by Ron Espinoza, Deputy Attorney General.

2. Donavan Earl Miranda (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about July 23, 2002, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH42373 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 2968 and will expire on December 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2968 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 July 12, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2968 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. 2968. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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. 2968, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH42373 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

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 and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his 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 Stipulated Surrender and Disciplinary Order 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 Stipulated Surrender of License 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 Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH42373 issued to Respondent Donovan Earl Miranda is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a

part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board both his Registration wall certificate and pocket license on or before the effective date of the Decision and Order.

4. Respondent understands and agrees that he may not apply for licensure or petition for reinstatement for any license from the Board for three (3) years from the effective date of the Decision and Order.

5. Respondent understands and agrees that if he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 2968 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

6. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other heath care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 2968 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $3,000.00 prior to issuance of a new or reinstated license.

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ACCEPTANCE

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

DATED: 09-22-06.

DONAVAN EARL MIRANDA
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 9-28-06.

BILL LOCKYER, Attorney General
of the State of California

RON ESPINOZA
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2006800100
80088512.wpd

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

In the Matter of the Accusation Against: DONAVAN EARL MIRANDA 9465 Wharton Rd. Santee, CA 92071 Pharmacy Technician No. TCH42373 Respondent.	Case No. 2968

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 November 30, 2006.

It is so ORDERED October 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2968

BILL LOCKYER, Attorney General
of the State of California
RON ESPINOZA, State Bar No. 176908
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2100
Facsimile: (619) 645-2061
E-mail: ron.espinoza@doj.ca.gov

Attorneys for Complainant

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

In the Matter of the Accusation Against: DONAVAN EARL MIRANDA 9465 Wharton Rd. Santee, CA 92071 Pharmacy Technician No. TCH42373 Respondent.	Case No. 2968 OAH No. 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, Department of Consumer Affairs.

2. On or about July 23, 2002, the Board of Pharmacy issued original Pharmacy Technician Registration Number TCH42373 to Donavan Earl Miranda (Respondent). The original Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2007, unless renewed.

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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.

A. Section 4301 of the Code states, in relevant 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:
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> . . . .
>
> (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.
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> . . . .
>
> (j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.
>
> (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.
>
> . . . .

B. Section 4059 of the Code states, in relevant part:

> (a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.
>
> . . . .

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C. Section 492 of the Code states:

> Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.
>
> This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

D. Health and Safety Code section 11170 states:

> No person shall prescribe, administer, or furnish a controlled substance for himself.

4. Section 4021 of the Code defines "controlled substance" as any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

5. Section 4022 defines "dangerous drugs" as any drug that is unsafe for self-medication and which by federal or state law can be lawfully dispensed only on prescription.

6. 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.

DRUGS

7. The following are all dangerous drugs, pursuant to Business and Professions Code section 4022, and are also controlled substances if so identified:

A. Soma (generic - carisoprodol) is classified as a dangerous drug under Section 4022.

B. Meprobamate is classified as a dangerous drug under Section 4022, and is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(18).

FACTS AND CIRCUMSTANCES

8. On May 2, 2005, at approximately 2:53 a.m., officers from the San Diego Sheriff's Department initiated a consensual contact with Respondent. During initial contact, one of the officers noticed signs and symptoms indicating that Respondent was possibly under the influence of a controlled substance. When asked if he was under the influence of any drugs, Respondent admitted that he had taken some muscle relaxers. When asked if he had any drugs on his person, Respondent admitted that he had several muscle relaxers in his pocket. When the officer asked whether the drugs were prescribed to him, Respondent admitted that they were not.

9. Respondent gave one of the officers permission to search his person, and during this search, thirteen and a half pills were discovered in Respondent's pant pocket. Respondent stated that the pills were generic Soma.

10. Respondent was administered and failed several field sobriety tests. Following the field sobriety tests, Respondent was arrested for being under the influence of a controlled substance. After being read his Miranda rights, Respondent agreed to speak to one of the officers. He told one of the officers that he had stolen the pills from his mother.

11. On May 19, 2005, Respondent was charged in a misdemeanor complaint with one count of being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a).) On June 9, 2005, Respondent pled guilty to this count. On this same date, Respondent applied for and was granted deferred entry of judgment for 18 months as to this count under Penal Code section 1000.

12. On June 9, 2005, Respondent admitted in his Plea of Guilty/No Contest-Misdemeanor Form that on the date charged he was under the influence of a controlled substance without a prescription, to wit: Meprobamate.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Use of Dangerous Drug)

13. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (h), in that he used a dangerous drug to the extent or in a manner as to be dangerous or injurious to himself or to any other person, or to the extent that

the use impaired his ability to conduct with safety to the public the practice authorized by his pharmacy technician registration, as set forth in paragraphs 8-10 and 12 above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Commission of Acts Involving Moral Turpitude, Dishonesty and Deceit)

14. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (f), in that he possessed and ingested a dangerous drug without a prescription, which was stolen from his mother, as set forth in paragraphs 8-10 above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Furnishing Dangerous Drugs to Oneself Without Prescription)

15. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (o), in that he furnished himself with a dangerous drug without a prescription in violation of Business and Professions Code section 4059, as set forth in paragraphs 8-10 above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Violation of Statute Regulating Controlled Substances)

16. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (j), in that he furnished himself a controlled substance in violation of Health and Safety Code section 11170, as set forth in paragraphs 8-10 and 12 above.

OTHER MATTERS

17. On May 2, 2005, Respondent was arrested for being under the influence of a controlled substance (see paragraphs 8-10 above). After being read his Miranda rights, Respondent admitted to the arresting officer that he was "arrested for the same thing in November."

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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:

A. Revoking or suspending Pharmacy Technician Number TCH42373, issued to Donavan Earl Miranda;

B. Ordering Donavan Earl Miranda 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;

C. Taking such other and further action as deemed necessary and proper.

DATED: 6/29/06

P. F. Harris

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

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

Case Name: **In the Matter of the Accusation Against: DONAVAN EARL MIRANDA**

Case No.: **2968**

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 July 12, 2006, I served the attached **Accusation, Statement to Respondent, Request for Discovery, Discovery Statutes, Notice of Defense (2 copies)**, 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, Request for Discovery, Discovery Statutes, Notice of Defense (2 copies)**, 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 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Donavan Earl Miranda
9465 Wharton Rd.
Santee, CA 92071

Certified Article Number
7160 3901 9849 3221 2322
SENDERS RECORD

In Pro Per

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 July 12, 2006, at San Diego, California.

Rosita Donovan
Declarant

Signature

cc: Kim deLong, Enforcement Analyst, Board of Pharmacy

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