

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

In the Matter of the Accusation Against:

CHRISTOPHER DUVAL CAPALAR
7428 Peter Pan Avenue
San Diego, CA 92114
Pharmacy Technician Registration No. TCH
56573

Respondent.

Case No. 2998

OAH No. L-2007030-754

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on February 13, 2008.

It is so ORDERED January 14, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR, State Bar No. 174721
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2611
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 CHRISTOPHER DUVAL CAPALAR
7428 Peter Pan Avenue
14 San Diego, CA 92114

15 Pharmacy Technician Registration No.
TCH 56573

16 Respondent.

Case No. 2998

OAH No. L-2007030-754

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 In the interest of a prompt and speedy resolution of this matter, consistent with the
19 public interest and the responsibility of the Board of Pharmacy, Department of Consumer
20 Affairs, the parties hereby agree to the following Stipulated Surrender of License and Order
21 which will be submitted to the Board for approval and adoption as the final disposition of the
22 Accusation.

23 **PARTIES**

24 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of
25 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
26 by Edmund G. Brown Jr., Attorney General of the State of California, by Diane de Kervor,
27 Deputy Attorney General.

28 ///

1 2. Christopher Duval Capalar (Respondent) is representing himself in this
2 proceeding and has chosen not to exercise his right to be represented by counsel.

3 3. On or about May 28, 2004, the Board of Pharmacy issued Pharmacy
4 Technician Registration No. TCH 56573 to Respondent. The registration was in full force and
5 effect at all times relevant to the charges brought in Accusation No. 2998 and will expire on
6 September 30, 2009, unless renewed.

7 **JURISDICTION**

8 4. Accusation No. 2998 was filed before the Board of Pharmacy, and is
9 currently pending against Respondent. The Accusation and all other statutorily required
10 documents were properly served on Respondent on February 15, 2007. Respondent timely filed
11 his Notice of Defense contesting the Accusation. A copy of Accusation No. 2998 is attached as
12 exhibit A and incorporated herein by reference.

13 **ADVISEMENT AND WAIVERS**

14 5. Respondent has carefully read, and understands the charges and allegations
15 in Accusation No. 2998. Respondent also has carefully read, and understands the effects of this
16 Stipulated Surrender of License and Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 ///

27 ///

28 ///

1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2998, agrees that cause exists for discipline and hereby surrenders his Pharmacy
4 Technician Registration No. TCH 56573 for the Board's formal acceptance.

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

8 **CONTINGENCY**

9 10. The parties understand and agree that facsimile copies of this Stipulated
10 Surrender of License and Order, including facsimile signatures thereto, shall have the same force
11 and effect as the originals.

12 11. In consideration of the foregoing admissions and stipulations, the parties
13 agree that the Board may, without further notice or formal proceeding, issue and enter the
14 following Order:

15 **ORDER**

16 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH
17 56573 issued to Respondent Christopher Duval Capalar is surrendered and accepted by the Board
18 of Pharmacy.

19 12. The surrender of Respondent's Pharmacy Technician Registration and the
20 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
21 against Respondent. This stipulation constitutes a record of the discipline and shall become a
22 part of Respondent's license history with the Board.

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

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

27 ///

28 ///

15. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2998 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

16. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 2998 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.

17. Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$3,154.00 prior to issuance of a new or reinstated license.

18. Respondent may not apply or reapply for, or petition for reinstatement of, any license, permit, or registration from the Board for three (3) years from the effective date of this Decision and Order.

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: 11/7/07


CHRISTOPHER DUVAL CAPALAR
Respondent

///

///

///

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

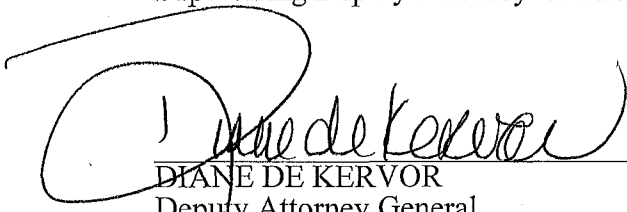
ENDORSEMENT

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

DATED: November 7, 2007

EDMUND G. BROWN JR., Attorney General
of the State of California

JAMES M. LEDAKIS
Supervising Deputy Attorney General



DIANE DE KERVOR
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2006801218
80177245.wpd

Exhibit A
Accusation No. 2998

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 MARGARET A. LAFKO

Supervising Deputy Attorney General

3 DIANE DE KERVOR, State Bar No. 174721

Deputy Attorney General

4 California Department of Justice

110 West "A" Street, Suite 1100

5 San Diego, CA 92101

6 P.O. Box 85266

San Diego, CA 92186-5266

7 Telephone: (619) 645-2611

Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2998

13 CHRISTOPHER DUVAL CAPALAR

14 7428 Peter Pan Avenue

San Diego, CA 92114

15 Pharmacy Technician Registration No.

16 TCH 56573

A C C U S A T I O N

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia K. Herold (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of
23 Consumer Affairs.

24 2. On or about May 28, 2004, the Board of Pharmacy issued Pharmacy
25 Technician Registration Number TCH 56573 to CHRISTOPHER DUVAL CAPALAR
26 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
27 relevant to the charges brought herein and will expire on September 30, 2007, unless renewed.

28 ///

JURISDICTION AND STATUTORY PROVISIONS

3. This Accusation is brought before the Board of Pharmacy, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 118, subdivision (b), states, in pertinent part, that the 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. Code section 482 states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

6. Section 490 of the Code states, in pertinent part:

"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. . . ."

7. Code section 493 states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 8. Section 4301 of the Code states:

7 "The board shall take action against any holder of a license who is guilty of
8 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
9 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
10 following:

11 "....

12 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
13 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
14 otherwise, and whether the act is a felony or misdemeanor or not.

15 "....

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

21 "....

22 "(j) The violation of any of the statutes of this state or of the United States
23 regulating controlled substances and dangerous drugs.

24 "(k) The conviction of more than one misdemeanor or any felony involving the
25 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
26 combination of those substances.

27 "(l) The conviction of a crime substantially related to the qualifications, functions,
28 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
9 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
10 meaning of this provision. The board may take action when the time for appeal has elapsed, or
11 the judgment of conviction has been affirmed on appeal or when an order granting probation is
12 made suspending the imposition of sentence, irrespective of a subsequent order under Section
13 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
14 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
15 or indictment.

16 "....

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

21 "(p) Actions or conduct that would have warranted denial of a license."

22 9. California Code of Regulations, title 16, section 1770 states:

23 "For the purpose of denial, suspension, or revocation of a personal or facility
24 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
25 Code, a crime or act shall be considered substantially related to the qualifications, functions or
26 duties of a licensee or registrant if to a substantial degree it evidences present or potential
27 unfitness of a licensee or registrant to perform the functions authorized by his license or
28 registration in a manner consistent with the public health, safety, or welfare."

1 10. California Code of Regulations, title 16, section 1769 provides, in
2 pertinent part:

3 "(b) When considering the suspension or revocation of a facility or a personal
4 license on the ground that the licensee or the registrant has been convicted of a crime, the board,
5 in evaluating the rehabilitation of such person and his present eligibility for a license will
6 consider the following criteria:

7 "(1) Nature and severity of the act(s) or offense(s).

8 "(2) Total criminal record.

9 "(3) The time that has elapsed since commission of the act(s) or offense(s).

10 "(4) Whether the licensee has complied with all terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee.

12 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

13 **COST RECOVERY**

14 11. Section 125.3 of the Code provides, in pertinent part, that the Board may
15 request the administrative law judge to direct a licensee found to have committed a violation or
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
17 and enforcement of the case.

18 **DRUGS**

19 12. **Cocaine**, a narcotic, is a dangerous drug pursuant to section 4022 and is a
20 Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(6).

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(May 26, 2005 Criminal Conviction - Possession of a Controlled Substance,**
23 **Driving Under the Influence of Drugs, and Under the Influence of a**
24 **Controlled Substance on March 31, 2005)**

25 13. Grounds exist to revoke Respondent's license under sections 490, 493, and
26 4301(h), (j), (k), (o), and (p) for a criminal conviction that is substantially related to the
27 qualifications, functions, and duties of a Pharmacy Technician involving the administering to
28 oneself of a controlled substance, violating state laws regarding controlled substances as well as
pharmacy laws, convictions involving the use of drugs and alcohol, and conduct warranting

1 denial of a license. On or about May 26, 2005 in the Superior Court for the County of San
2 Diego, in a case entitled *People vs. Christopher Duval Capalar* (Sup. Ct., San Diego, 2005, Case
3 No. CD190029), respondent pled guilty to a violation of Health and Safety Code section
4 11350(a), a felony and Vehicle Code Section 23152(a), a misdemeanor. The circumstances of
5 the conviction are as follows:

6 14. On or about March 31, 2005, at 7:30 p.m., a police officer stopped
7 Respondent's car for speeding and erratic driving. Before he was stopped, Respondent was
8 driving 70 mph in a 40 mph zone and then 40 mph in a 25 mph zone, swerving in and out of
9 lanes of traffic, and taking turns very quickly. The officer noted that Respondent was acting
10 hyperactive, sweating profusely, and that his pupils were dilated. When the officer asked if
11 Respondent had taken any narcotics, Respondent said no and then later admitted that he had
12 snorted cocaine about 3 hours prior. Respondent also admitted that there was cocaine in the
13 vehicle. A search of the car revealed a bag with a white substance in it, which the Officer later
14 determined was a controlled substance.

15 15. Pursuant to a plea agreement, on or about May 26, 2005, Respondent was
16 granted deferred judgment for 18 months pursuant to Penal Code section 1000 on the Health and
17 Safety Code violation. Respondent was placed on 5 years probation for the Vehicle Code
18 Violation. Respondent was also ordered to pay \$1,950 in fines and fees, his license was
19 suspended for 90 days, and he was ordered to complete a first conviction program.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(May 19, 2006 Criminal Conviction -Acquiring Access Card Account**
22 **Information and Unauthorized Use of Personal Identifying Information**
 to Obtain Credit on June 5, 2005)

23 16. Grounds exist to revoke Respondent's license under sections 490, 493, and
24 4301(f), (l), and (p) for a criminal conviction that is substantially related to the qualifications,
25 functions, and duties of a Pharmacy Technician, a conviction that involves dishonesty, fraud,
26 deceit or corruption, and conduct warranting denial of a license. On or about May 19, 2006 in the
27 Superior Court for the County of San Diego, in a case entitled *People vs. Christopher Duval*

28 ///

1 Capalar (Sup. Ct., San Diego, 2005, Case No. CD195379), respondent pled guilty to a violation
2 of Penal Code Sections 484e(d), a felony, and 530.5(a), a misdemeanor. The circumstances of
3 the conviction are as follows:

4 17. On July 2, 2005, a San Diego Zoo employee found a portable credit card
5 skimming device next to a cash register being utilized by Respondent. When subsequently
6 questioned, Respondent admitted that he had used the device to capture credit card account
7 numbers on several occasions and that he returned the loaded skimming device to another
8 individual who was to pay him \$10.00 per skimmed account number. An investigation revealed
9 that fraud losses from the compromised accounts due to the skimming device's use at the Zoo
10 amounted to approximately \$7,752.52

11 18. Pursuant to a plea agreement, on or about July 28, 2006, Respondent was
12 sentenced to 180 days in jail, three years probation, short term work furlough, fines in the amount
13 of \$439 and restitution in the amount of \$5,824.46 to CitiBank.

14 **PRAYER**

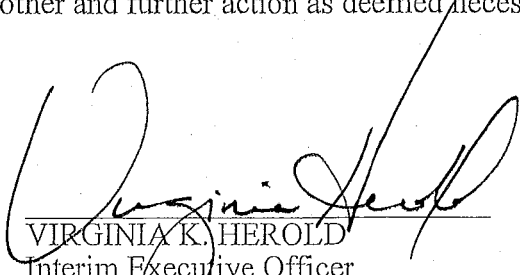
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein

16 1. Revoking or suspending Pharmacy Technician Registration Number TCH
17 56573, issued to Christopher Duval Capalar.

18 2. Ordering Christopher Duval Capalar to pay the Board of Pharmacy the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3;

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 2/8/07

23
24 
25 VIRGINIA K. HEROLD
26 Interim Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant