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

2	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
3		
4	In the Matter of the Accusation Against:	Case No. 3118
5	Gregory James Mueller	
6	175 Mesquite Ct Brentwood, CA 94513	STIPULATED SURRENDER OF LICENSE AND ORDER
7		DICENSE AND ORDER
8	Pharmacy Technician Registration No. TCH 56168	
9	Respondent.	ı
10		
11		
12	DECISION AND ORDER	
13	The attached Stipulated Surrender of License and Order is hereby adopted by the Board	
14	of Pharmacy of the Department of Consumer Affairs, as its Decision in the above-entitled	
15	matter.	
16		
17	This decision shall become effective on April 11, 2008	
18	It is so ORDERED on <u>March 12, 2008</u> .	
19	BOARD	OF PHARMACY
20	DEPAR	TMENT OF CONSUMER AFFAIRS OF CALIFORNIA
21	SIAIL	OF CALIFORNIA
22		
23	Ву	MMan Powen WILLIAM POWERS
24	<b>)</b>	Board President
25		
26		
27		

1	EDMUND G. BROWN JR., Attorney General of the State of California FRANK H. PACOE	
2		
3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663	
4	Deputy Attorney General 455 Golden Gate Avenue, Suite 11000	
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480	
6	Attorneys for Complainant	
7	BEFORE	rur
8 9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
ļ	In the Matter of the Accusation Against:	Case No. 3118
11	GREGORY JAMES MUELLER 175 Mesquite Ct.	OAH No.
12	Brentwood, CA 94513	STIPULATED SURRENDER OF LICENSE AND ORDER
13	Pharmacy Technician License No. TCH 56168	
14	Respondent.	
15		•
16	In the interest of a prompt and speedy resolution of this matter, consistent with th	
17	public interest and responsibility of the Board of Pharmacy, Department of Consumer Affairs,	
18	the parties hereby agree to the following Stipulated Surrender of License and Order which will b	
19	submitted to the Board for approval and adoption as the final disposition of the Accusation.	
20		
21	<u>PARTIES</u>	
22	1. Virginia Herold (Complainant) is the Executive Officer of the Board of	
23	Pharmacy. She brought this action solely in her official capacity and is represented in this matte	
24	by Edmund G. Brown Jr., Attorney General of the State of California, by Joshua A. Room,	
25	Deputy Attorney General.	
26	2. Gregory James Mueller (Respondent) is representing himself in this	
27	proceeding and has chosen not to exercise his right to be represented by counsel.	
28	111	

3. On or about April 28, 2004, the Board of Pharmacy issued Pharmacy Technician License No. TCH 56168 to Gregory James Mueller (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 3118 and will expire on May 31, 2008, unless renewed.

## **JURISDICTION**

4. Accusation No. 3118 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 January 2,
2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
Accusation No. 3118 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. 3118. 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.

26 | ///

27 | ///

28 | ///

#### CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3118, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician License No. 56168 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 License without further notice, process, or right to a hearing.

#### CONTINGENCY

- 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 stipulation, 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 License No. TCH 56168, issued to Gregory James Mueller (Respondent), is surrendered and accepted by the Board of Pharmacy.

///

///

///

28 ///

- 13. The surrender of Respondent's Pharmacy Technician License 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.
- 14. 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.
- 15. Respondent shall cause to be delivered to the Board both his wall License and pocket renewal certificate on or before the effective date of this Decision and Order.
- 16. 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.
- 17. 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. 3118 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 18. 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. 3118 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.
- 19. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$3,862.25 prior to issuance of a new or reinstated license.

# **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 License. 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: **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: EDMUND G. BROWN JR., Attorney General of the State of California FRANK H. PACOE Supervising Deputy Attorney General Deputy Attorney General Attorneys for Complainant

DOJ Matter ID: SF2007402696 20114412.wpd

Exhibit A
Accusation No. 3118

		•
1	EDMUND G. BROWN JR., Attorney General of the State of California	
2	FRANK H. PACOE Supervising Deputy Attorney General	
3	JOSHUA A. ROOM, State Bar No. 214663 Deputy Attorney General	
4	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004	
5	Telephone: (415) 703-1299 Facsimile: (415) 703-5480	
6	Attorneys for Complainant	
7		
8	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against:  Case No. 3118	
12	GREGORY JAMES MUELLER 175 Mesquite Ct. ACCUSATION	
12	Brentwood, CA 94513	
13	Pharmacy Technician License No. TCH 56168	
14 15	Respondent.	
16		
17	Complainant alleges:	
18	<u>PARTIES</u>	
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official	al
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
21	2. On or about April 28, 2004, the Board of Pharmacy issued Pharmacy	
22	Technician License Number TCH 56168 to Gregory James Mueller (Respondent). The	
23	Pharmacy Technician License was in full force and effect at all times relevant to the charges	
24	brought herein and will expire on May 31, 2008, unless renewed.	
25	JURISDICTION	
26	3. This Accusation is brought before the Board of Pharmacy (Board),	
27	Department of Consumer Affairs, under the authority of the following laws. All section	
28	references are to the Business and Professions Code (Code) unless otherwise indicated.	

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation 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. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

## STATUTORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.

"(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.

- 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 10. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- Health and Safety Code section 11173, subdivision (a), provides that 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.
- 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance classified in Schedule III, IV, or V (Health and Safety Code sections 11056-11058) which is a narcotic drug, except upon a valid prescription.
- 13. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance classified in Schedule III, IV, or V (Health and Safety Code sections 11056-11058) which is not a narcotic drug, except upon a valid prescription.
- 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance classified in Schedule III, IV, or V (Health and Safety Code sections 11056-11058) which is a narcotic drug, except when administered by or under the direction of an authorized licensee.

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

## CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 16. Section 4021 of the Code states:
- "Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
  - 17. Section 4022 of the Code states, in pertinent part:
- "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:
- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 18. **Klonopin** is a brand name for **clonazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(7) and a dangerous drug as designated by Business and Professions Code section 4022. It is an anti-anxiety/sedative drug.
- 19. **Norco** and **Vicodin** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and a dangerous drug as designated by Business and Professions Code section 4022. These are narcotic pain relief drugs.
- 20. **Serax** is a brand name for **oxazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(23) and a dangerous drug as designated by Business and Professions Code section 4022. It is an anti-anxiety/sedative drug.
- 21. **Ativan** is a brand name for **lorazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as designated by Business and Professions Code section 4022. It is an anti-anxiety/sedative drug.

tablet; 1 clonazepam (Klonopin) tablet; and 22 oxazepam (Serax) tablets.

unknown quantities controlled substances and/or dangerous drugs, without a valid prescription.

1	
2	
3	
4	Cod
5	abo
6	qua
7	
8	
9	
10	
11	Coc
12	para
13	mis
14	
15	
16	
17	
18	Co
19	par
20	abe
21	
22	

24

25

26

27

28

#### FOURTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

37. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 28-33 above, possessed, conspired to possess, and/or assisted in or abetted the possession of, unknown quantities of controlled substances and/or dangerous drugs, without a valid prescription.

### FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

38. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 28-33 above, obtained unknown quantities of controlled substances, by fraud, deceit, misrepresentation, subterfuge, or concealment of material fact.

SIXTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Narcotic Controlled Substances)

39. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that, as described in paragraphs 28-33 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of, certain identified controlled substances, without a valid prescription.

#### SEVENTH CAUSE FOR DISCIPLINE

(Unlawful Use of Narcotic Controlled Substances)

40. Respondent is subject to discipline under section 4301(h), (j) and/or (o) of the Code, and/or Health and Safety Code section 11550, in that, as described in paragraphs 28-33 above, Respondent used or was under the influence of, conspired to use/be under the influence of, and/or assisted in or abetted use/being under the influence of, certain identified controlled substances, not administered by or under the direction of an authorized licensee.

## 1 EIGHTH CAUSE FOR DISCIPLINE 2 (Unprofessional Conduct) 3 41. Respondent is subject to discipline under section 4301 of the Code in that 4 Respondent, as described in paragraphs 28-40 above, engaged in unprofessional conduct. 5 **PRAYER** 7 WHEREFORE, Complainant requests that a hearing be held on the matters herein 8 alleged, and that following the hearing, the Board of Pharmacy issue a decision: 9 Revoking or suspending Pharmacy Technician License Number 56168, 10 issued to Gregory James Mueller (Respondent); Ordering Respondent to pay the Board reasonable costs of investigation 11 B. and enforcement of this case, pursuant to Business and Professions Code section 125.3; 12 Taking such other and further action as deemed necessary and proper. 13 14 DATED: 12/27/07 15 16 17 18 Executive Officer 19 Board of Pharmacy Department of Consumer Affairs 20 State of California Complainant 21 22 23 SF2007402696 24 40190210.wpd 25 26 27