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

In the Matter of the Accusation Against:	Case No. 3252
CALEB THOMAS GARLIPP Respondent.	**DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 5, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3252 against Caleb Thomas Garlipp (Respondent) before the Board of Pharmacy.

2. On or about March 28, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 74999 to Caleb Thomas Garlipp (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein. It expired on January 31, 2009, and has not been renewed. The license is now canceled.

3. On or about June 11, 2009, Wallace Greene, an employee of the Department of Justice, served copies of: Accusation No. 3252; a Statement to Respondent, a Notice of Defense, a Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 by Certified and First Class Mail to Respondent's address of record with the Board, 1676 Le Roy Avenue, Berkeley, CA 94709. 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). In addition, on or about April 21, 2009, the Certified Mail Return Receipt card was returned to the Department of Justice, dated April 20, 2009 for receipt of the Accusation materials, with what appears to be Respondent's signature. A copy of the Certified Mail Return Receipt card is included with the documents in exhibit A.

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 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3252.

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 the evidence on file herein, finds that the allegations in Accusation No. 3252 are true.

9. The total costs for investigation and enforcement in connection with the Accusation are $2,991.75 as of July 24, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Caleb Thomas Garlipp has subjected his Pharmacy Technician License No. TCH 74999 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. In violation of Business and Professions Code section 4301(f), Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, by conduct including: diversion or theft between in or around May 2007 and in or around September 2007 of multiple bottles and/or doses of **Vicodin, Xanax, OxyContin,Valium, Morphine** and **Duragesic (fentanyl)** patches (or generic equivalent(s)) from a Walgreens Pharmacy in Oakland, CA by which he was employed as a Pharmacy Technician; secretion of these drugs on his person; and sale or barter of the drugs on the street to acquire **cocaine** for personal use;

b. In violation of Business and Professions Code section 4301(h), between at least May and September 2007, Respondent on one or more occasions administered controlled substances, including (base/rock, "crack") **cocaine** products, to himself;

c. In violation of Business and Professions Code section(s) 4301(l) and/or 490, and/or by reference to California Code of Regulations, title 16, section 1770, Respondent was convicted of substantially related crime(s), when on or about September 11, 2007, in a criminal case titled *People v. Caleb Garlipp*, Case No(s). 156462 and/or 532839 in Alameda County Superior Court, Respondent was convicted of violating Penal Code section 487(a) (Grand Theft > $400), a felony;

d. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or 4059, Respondent, as described above, furnished to himself or another without valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, controlled substance(s);

e. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or 4060, and/or Health and Safety Code section(s) 11350 and/or 11377, Respondent, as described above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a valid prescription;

f. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or Health and Safety Code section(s) 11170 and/or 11550, Respondent, as described above, self-administered/used, conspired to self-administer/use, and/or assisted in/abetted self-administration/use of, a controlled substance, without prescription;

g. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to

obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact;

h. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or Health and Safety Code section(s) 11351, 11378, and/or 11379, Respondent, as described above, possessed or purchased a controlled substance for sale, or conspired and/or assisted in or abetted such possession or purchase for sale, and/or transported, imported, sold, furnished, administered, gave away, offered to transport, import, sell, furnish, administer, or give away, or conspired and/or assisted in or abetted such transportation, importation, sale, furnishing, administration, or gifting of, a controlled substance;

i. In violation of Business and Professions Code section 4301, Respondent, as described above, engaged in unprofessional conduct.

ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 74999, heretofore issued to Respondent Caleb Thomas Garlipp, 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 February 18, 2010.

It is so ORDERED January 19, 2010.

Kenneth H. Schell

KENNETH H. SCHELL, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

40358529.DOC
DOJ docket number:SF2008402959

Attachment:

Exhibit A: Accusation No.3252

Exhibit A

Accusation No. 3252

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

In the Matter of the Accusation Against: CALEB THOMAS GARLIPP 1676 Le Roy Avenue Berkeley, CA 94709 Pharmacy Technician License No. TCH 74999 Respondent.	Case No. 3252 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia Herold (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 March 28, 2007, the Board of Pharmacy issued Pharmacy Technician License Number TCH 74999 to Caleb Thomas Garlipp (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein. It expired on January 31, 2009, and has not been 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 (Code) unless otherwise indicated.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

(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 or by any other state or federal regulatory agency.

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

9. California Code of Regulations, title 16, section 1770, provides that for the purpose(s) of license discipline, 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 the license or registration in a manner consistent with the public health, safety, or welfare.

10. 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.

11. 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.

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

13. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances or a prescription therefor, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b), (c), or (f)(1)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic, absent a prescription.

///

15. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess for sale certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b) or (c)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug.

16. Health and Safety Code section 11352, in pertinent part, makes it unlawful to transport, import, sell, furnish, administer, or give away, or offer to transport, import, sell, furnish, administer, or give away, certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b), (c) or (f)(1)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, without a valid prescription.

17. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055), subdivision (d), (e), or (f), without a valid prescription.

18. Health and Safety Code section 11378, in pertinent part, makes it unlawful to possess for sale any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055), subdivision (d), (e), or (f).

19. Health and Safety Code section 11379, in pertinent part, makes it unlawful for any person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import, sell, furnish, administer, or give away, any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055), subdivision (d), (e), or (f), without a valid prescription.

20. Health and Safety Code section 11550, in pertinent part, makes it unlawful to use or be under the influence of certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b), (c) or (f)(1)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, except when administered by or under the direction of an authorized licensee.

21. 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

22. 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."

23. 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."

24. **Norco, Vicodin, Vicodin ES, Lortab,** and **Lorcet** 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 dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

25. **Xanax** is a brand name for **alprazolam,** a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

26. **OxyContin** is a brand name for **oxycodone**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(N) and a dangerous drug as designated by Business and Professions Code section 4022. It is an opiate drug.

27. **Valium** is a brand name for **diazepam**, which is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

28. **Morphine** (**sulfate**) is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M) and a dangerous drug as designated by section 4022 of the Code. It is a narcotic drug..

29. **Duragesic** (patch) is a brand name for **fentanyl**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(8) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

30. **Dexedrine** is a brand name for **dextroamphetamine sulfate**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(1) and dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

31. **Methadose** is a brand name for **methadone**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(14) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

32. **Ritalin** is a brand name for **methylphenidate**, a Scheduled II controlled substance as designated by Health and Safety Code section 11055(d)(6) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

33. **Cocaine** is a Schedule I (in base form) or Schedule II controlled substance as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

FACTUAL BACKGROUND

34. From on or about February 27, 2007 until on or about September 4, 2007, Respondent was employed as a pharmacy technician at a Walgreens Pharmacy (PHY 41885) in Oakland, CA. In that position, he had access to controlled substances and dangerous drugs.

35. On repeated occasions in and/or between in or around May 2007 and in or around September 2007, the exact dates of which are unknown, Respondent took advantage of that access to divert/steal multiple controlled substances and dangerous drugs from Walgreens' stock. The exact types and quantities of drugs taken by Respondent are unknown, but by his own admission included thefts of at least multiple bottles and/or doses of the drugs **Vicodin**, **Xanax**, **OxyContin**,**Valium**, **Morphine** and **Duragesic** (**fentanyl**) patches (or generic equivalent(s)).

36. Respondent admitted to hiding bottles of the drugs on his person in order to take them from the Walgreens pharmacy. Respondent admitted to selling the drugs on the street, and also to trading the stolen controlled substances for (base/rock) **cocaine** for personal use. He further admitted to doing so because of financial problems and his own drug addiction.

37. On or about February 29, 2008, Walgreens completed an (amended) DEA 106 form (Report of Theft or Loss of Controlled Substances) listing losses due to theft prior to September 4, 2007 (on which date Respondent was terminated from employment) of $42,419.00 worth of drugs, consisting of 100 tablets of **Dexedrine**, 22 **Duragesic** patches, 4,813 tablets of **Methadose**, 15 tablets of **Ritalin**, 2,941 tablets of **OxyContin**, 657 tablets of **Xanax**, 536 tablets of **Valium**, 2,303 tablets of **Vicodin**, 501 tablets of **Lortab**, and 10,623 tablets of **Norco** (or their generic equivalent(s)), a total of 22,511 dose units of controlled substances believed stolen.

38. On or about September 1, 2007, Respondent was taken into custody and/or arrested by Oakland Police on suspicion of violating Health and Safety Code section 11350(a) (Possession of Controlled Substance - base/rock **cocaine**) and Health and Safety Code section 11364 (Possession of Drug Paraphernalia). Based on this arrest, on or about September 5, 2007, in a case titled *People v. Caleb Garlipp*, Case No. 532777 in Alameda County Superior Court, Respondent was charged by felony Complaint with violating Health and Safety Code section 11350(a) (Possession of Controlled Substance - base/rock **cocaine**), a felony.

39. On or about September 4, 2007, based on the conduct described above in paragraphs 34-37, Respondent was taken into custody and/or arrested by Oakland Police on suspicion of violating Penal Code section 503 (Embezzlement), with an additional charge under Penal Code section 12022.1 (Commission of a Felony While Out on Bail/Recognizance). On or about September 6, 2007, in a case titled *People v. Caleb Garlipp*, Case No(s). 156462 and/or 532839 in Alameda County Superior Court, Respondent was charged by felony Complaint with violating Penal Code section 487(a) (Grand Theft > $400), a felony. On or about September 11, 2007, Respondent entered a plea of no contest and was found guilty/convicted of violating Penal Code section 487(a) (Grand Theft > $400), a felony. Pursuant to the plea, the charge(s) in Case No. 532777 (paragraph 38, above) against Respondent was/were dismissed.

40. Following his plea, Respondent was sentenced on or about September 11, 2007 as follows: Sixteen (16) months state prison, with that sentence suspended for Respondent to enter and complete a six (6) month residential treatment program. If he successfully completes the treatment program, he will be placed on five (5) year felony probation, and upon his payment of full restitution to Walgreens the charge will be retroactively reduced to a misdemeanor. If he fails to successfully complete the treatment program, he will have to serve the sixteen (16) month state prison term, and is also subject to a maximum prison sentence of three (3) years.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

41. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 34 to 40 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

42. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraphs 34 to 40 above, administered one or more controlled substances to himself, including (base/rock, "crack") **cocaine** products.

THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

43. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that as described in paragraphs 38 to 40 above, on or about September 11, 2007, in a criminal case titled *People v. Caleb Garlipp*, Case No(s). 156462 and/or 532839 in Alameda County Superior Court, Respondent was convicted on his plea of nolo contendere of violating Penal Code section 487(a) (Grand Theft > $400), a felony.

EIGHTH CAUSE FOR DISCIPLINE

(Possession or Purchase of Controlled Substance for Sale/Furnishing)

48. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11351, 11378, and/or 11379, in that Respondent, as described in paragraphs 34 to 40 above, possessed or purchased a controlled substance for sale, or conspired and/or assisted in or abetted such possession or purchase for sale, and/or transported, imported, sold, furnished, administered, gave away, offered to transport, import, sell, furnish, administer, or give away, or conspired and/or assisted in or abetted such transportation, importation, sale, furnishing, administration, or gifting of, a controlled substance.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

49. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 34 to 48 above, engaged in unprofessional conduct.

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 License Number TCH 61671, issued to Caleb Thomas Garlipp (Respondent);

B. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 6/5/09

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant