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

In the Matter of the Accusation Against:

Case No. 3260

## MELISSA CARMEL DAVIS 28147 Newbird Drive Saugus, CA 91350

Pharmacy Technician Registration No. TCH 21218

Respondent.

### **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the

By

Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 28, 2011.

It is so ORDERED February 25, 2011.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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STANLEY C. WEISSER Board President

.				
1	Едмилд G. Brown Jr. Attorney General of California			
2	LINDA K. SCHNEIDER Supervising Deputy Attorney General			
3	LORETTA A. WEST Deputy Attorney General			
4	State Bar No. 149294 110 West "A" Street, Suite 1100			
5	San Diego, CA 92101 P.O. Box 85266			
6	San Diego, CA 92186-5266			
7	Telephone: (619) 645-2107 Facsimile: (619) 645-2061			
8	Attorneys for Complainant			
9	BEFORE THE BOARD OF PHARMACY			
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
11				
12	In the Matter of the Accusation Against:	Case No. 2008 3260		
13	MELISSA CARMEL DAVIS 28147 Newbird Drive	OAH No. 2009101580 .		
14	Saugus, CA 91350	STIPULATED SURRENDER OF LICENSE AND ORDER		
15	Pharmacy Technician Registration No. TCH 21218			
16	Respondent.			
17	In the interest of a prompt and speedy r	esolution of this matter, consistent with the		
18	public interest and the responsibility of the Be	oard of Pharmacy of the Department of		
19	Consumer Affairs the parties hereby agree to	the following Stipulated Surrender of License		
20	and Order which will be submitted to the Boz	rd for approval and adoption as the final		
21	disposition of the Accusation.			
22	PARTIES			
23	1. Virginia Herold (Complainant) is the Executive Officer of the Board of			
24	Pharmacy. She brought this action solely in l	ner official capacity and is represented in this		
25	matter by Edmund G. Brown Jr., Attorney G	eneral of the State of California, by Loretta A.		
26	West, Deputy Attorney General.			
27	2. Respondent Melissa Carmel Davis	s is represented in this proceeding by attorney		
28	Jacek W. Lentz, whose address is 1055 Wilsh	ire Blvd., Suite 1996, Los Angeles, CA 90017.		
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On or about January 17, 1997, the Board of Pharmacy issued Pharmacy 3. Technician Registration No. TCH 212218, to Melissa Carmel Davis. The registration was in full force and effect at all times relevant to the charges brought in Accusation No. 2008 3260 3 and will expire on October 31, 2010, unless renewed. 4

#### JURISDICTION

On August 20, 2009, Accusation No. 2008 3260 was filed before the Board of 4. 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 September 1, 2009. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2008 3260 is attached as exhibit A and 10 incorporated herein by reference.

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## ADVISEMENT AND WAIVERS

Respondent has carefully read, fully discussed with counsel, and understands the 5. 13 charges and allegations in Accusation No. 2008 3260. Respondent also has carefully read, 14 fully discussed with counsel, and understands the effects of this Stipulated Surrender of 15 License and Order. 16

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

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

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Respondent admits the truth of each and every charge and allegation in
 Accusation No. 2008 3260, agrees that cause exists for discipline, and hereby surrenders her
 Pharmacy Technician Registration No. TCH 212218 for the Board's formal acceptance.

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

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. 9 Respondent understands and agrees that counsel for Complainant and the staff of the 10 Board of Pharmacy may communicate directly with the Board regarding this stipulation 11 and surrender, without notice to or participation by Respondent or her counsel. By signing 12 the stipulation, Respondent understands and agrees that she may not withdraw her 13 agreement or seek to rescind the stipulation prior to the time the Board considers and acts 14 upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated 15 Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it 16 shall be inadmissible in any legal action between the parties, and the Board shall not be 17 disqualified from further action by having considered this matter. 18

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

12. This Stipulated Surrender of License and Order is intended by the parties to be
an integrated writing representing the complete, final, and exclusive embodiment of their
agreement. It supersedes any and all prior or contemporaneous agreements,
understandings, discussions, negotiations, and commitments (written or oral). This
Stipulated Surrender of License and Order may not be altered, amended, modified,
supplemented, or otherwise changed except by a writing executed by an authorized
representative of each of the parties.

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13. 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:

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#### <u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 212218, issued to Respondent Melissa Carmel Davis, is surrendered and accepted by the Board of Pharmacy.

8 14. The surrender of Respondent's Pharmacy Technician Registration and the 9 acceptance of the surrendered license by the Board shall constitute the imposition of 10 discipline against Respondent. This stipulation constitutes a record of the discipline and 11 shall become a part of Respondent's license history with the Board. Respondent shall be 12 required to report this as prior discipline if she ever applies to this or any other health care 13 licensing agency in the State of California.

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

16 16. Respondent shall cause to be delivered to the Board both her wall license
17 certificate and, if one was issued, pocket license on or before the effective date of the
18 Decision and Order.

Respondent shall not petition for reinstatement or apply for a new registration 17. 19 or license from the Board, for a period of at least three years from the effective date of this 20 Decision and Order. If Respondent ever files an application for licensure or a petition for 21 reinstatement in the State of California, the Board of Pharmacy shall treat it as a new 22 application for licensure. Respondent shall satisfy all requirements applicable to that 23 license as of the date the application is submitted to the Board, including, but not limited to, 24 certification by a nationally recognized body prior to the issuance of a new license, and all 25 of the charges and allegations contained in Accusation No. 2008 3260 shall be deemed to be 26 true, correct and admitted by Respondent when the Board determines whether to grant, 27 deny, or restrict licensure. 28

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1	18. If Respondent should ever apply or reapply for a new license or certification, or
2	petition for reinstatement of a license, by any other health care licensing agency in the State
3	of California, all of the charges and allegations contained in Accusation No. 2008 3260 shall
4	be deemed to be true, correct, and admitted by Respondent for the purpose of any
5	Statement of Issues or any other proceeding seeking to deny or restrict licensure.
6	19. Respondent shall pay the Board its costs of investigation and enforcement in the
7	amount of \$3,500.00 prior to issuance of a new or reinstated license.
8	ACCEPTANCE
9	I have carefully read the above Stipulated Surrender of License and Order and have
10	fully discussed it with my attorney, Jacek W. Lentz. I understand the stipulation and the
11	effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated
12	Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be
13	bound by the Decision and Order of the Board of Pharmacy.
14	
15	DATED:
16	Respondent
17	I have read and fully discussed with Melissa Carmel Davis the terms and conditions
18	and other matters contained in this Stipulated Surrender of License and Order. I approve
19	its form and content.
20	DATED:
21	JACEK W. LENTZ Attorney for Respondent
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	II Stimulated Surrender of License (Case No. 2008 3260)

Stipulated Surrender of License (Case No. 2008 3260)

18. If Respondent should ever apply or reapply for a new license or certification, or 1 petition for reinstatement of a license, by any other health care licensing agoncy in the State 2 of California, all of the charges and allegations contained in Accusation No. 2008 3260 shall 3 4 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. 5 19. Respondent shall pay the Board its costs of investigation and enforcement in the 5 amount of \$3,500.00 prior to issuance of a new or reinstated license. 7 ACCEPTANCE 8 I have carefully read the above Stipulated Surrender of License and Order and have 9 fully discussed it with my attorney, Jacek W. Lentz. I understand the stipulation and the 10 effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated 11 Surrencer of License and Order voluntarily, knowingly, and intelligently, and agree to be 12 13 bound by the Decision and Order of the Board of Pharmacy. 14 8-4-10 DATER: 15 MELISSA CARMEL DAVIS 16 Respondent 17 I have read and fully discussed with Melissa Carmel Davis the terms and conditiona 18 and other matters contained in this Stipulated Suprember of License and Order. I approve 19 its form and conten 20 DATED: JACEK W. LENT 21 Attorney for Respondent 22 111 23 111 24 111 2511126 H27111 28 5 Stipulated Surrender of License (Case No. 2008 3260) ! AUG-04-2010 WED 03:23 PM DEPT, OF JUSTICE/ATTY GEN

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18. If Respondent should 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. 2008 3260 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.

6 19. Respondent shall pay the Board its costs of investigation and enforcement in the
7 amount of \$3,500.00 prior to issuance of a new or reinstated license.

#### ACCEPTANCE

9 I have carefully read the above Stipulated Surrender of License and Order and have
10 fully discussed it with my attorney, Jacek W. Lentz. I understand the stipulation and the
11 effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated
12 Surrencer of License and Order voluntarily, knowingly, and intelligently, and agree to be
13 bound by the Decision and Order of the Board of Pharmacy.

15 DATED:

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MELISSA CARMEL DAVIS Respondent
I have read and fully discussed with Melissa Carmel Davis the terms and conditions
and other matters contained in this Stipulated Surrender of License and Order. I approve
its form and content
DATED; HUG. 4 19 ALCE ACT2
IACEK W. LENTZ Attorney for Respondent
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Stipulated Surrender of License (Case No. 2008 3260)

1	ENDORSEMENT
2	The foregoing Stipulated Surrender of License and Order is hereby respectfully
3	submitted for consideration by the Board of Pharmacy of the Department of Consumer
4	Affairs.
5	Dated: August 4, 2010 Respectfully submitted,
6	EDMUND G. BROWN JR.
7	Attorney General of California LINDA K. SCHNEIDER
8	Supervising Deputy Attorney General
9	Southant West
10	LORETTA A. WEST Deputy Attorney General
11	Deputy Attorney General Attorneys for Complainant
12	SD2009803452
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# Exhibit A

Accusation No. 2008 3260

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	1	EDMUND G. BROWN JR., Attorney General				
	2	of the State of California JAMES M. LEDAKIS, State Bar No. 132645				
	3	Supervising Deputy Attorney General BLANCA I. LOPEZ,				
	4	Senior Legal Analyst 110 West "A" Street, Suite 1100				
	5	San Diego, CA 92101 P.O. Box 85266				
	6	San Diego, CA 92186-5266 Telephone: (619) 645-2610				
	7	Facsimile: (619) 645-2061				
	8	Attomeys for Complainant				
•	9	BEFORE T BOARD OF PHA				
	10	DEPARTMENT OF CON STATE OF CAL	SUMER AFFAIRS			
	11					
	12	In the Matter of the Accusation Against:	Case No. 3260			
	13	MELISSA CARMEL DAVIS, TCH 28147 Newbird Drive	ACCUSATION			
	14	Saugus, CA 91350				
	15	Original Technician Registration No. TCH 21218				
	16	Respondent.				
	17					
	18					
	1.9	Complainant alleges:				
	20	PARTIE	<u>.</u>			
	21	1. Virginia Herold (Complainan	t) brings this Accusation solely in her official			
	22	capacity as the Executive Officer of the Board of Ph	armacy, Department of Consumer Affairs.			
	23	2. On or about January 17, 1997	, the Board of Pharmacy issued Original			
•	24	Technician Registration Number TCH 21218 to Mel	lissa Carmel Davis (Respondent). The Origina			
	25	Technician Registration was in full force and effect	at all times relevant to the charges brought herein			
	26	and will expire on October 31, 2010, unless renewed	1.			
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1	JURISDICTION
2	3. This Accusation is brought before the Board of Pharmacy (Board),
3	Department of Consumer Affairs, under the authority of the following laws. All section
4	references are to the Business and Professions Code unless otherwise indicated.
5	4. Section 4300 of the Code states:
6	"(a) Every license issued may be suspended or revoked.
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8	5. Section 4301 of the Code states:
9	"The board shall take action against any holder of a license who is guilty of
10	unprofessional conduct or whose license has been procured by fraud or misrepresentation or
11	issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
12	following:
13	ι. 
14	"(f) The commission of any act involving moral turpitude, dishonesty, fraud,
15	deceit, or corruption, whether the act is committed in the course of relations as a licensee or
16	otherwise, and whether the act is a felony or misdemeanor or not.
17	"(h) The administering to oneself, of any controlled substance, or the use of any
18	dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
19	injurious to oneself, to a person holding a license under this chapter, or to any other person or to
20	the public, or to the extent that the use impairs the ability of the person to conduct with safety to
21	the public the practice authorized by the license.
22	"(j) The violation of any of the statutes of this state, or any other state, or of the
23	United States regulating controlled substances and dangerous drugs.
24	"(o) Violating or attempting to violate, directly or indirectly, or assisting in or
25	abetting the violation of or conspiring to violate any provision or term of this chapter or of the
26	applicable federal and state laws and regulations governing pharmacy, including regulations
27	established by the board or by any other state or federal regulatory agency.
28	"(p) Actions or conduct that would have warranted denial of a license.
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6. Section 4060 states, in pertinent part, that no person shall possess any
 controlled substance, except that furnished to a person upon a prescription of a physician, dentist,
 podiatrist, or veterinarian.

4 7. Health and Safety Code section 11170 states that no person shall prescribe,
5 administer, or furnish a controlled substance to himself.

8. Health and Safety Code section 11173, subdivision (a), states, in pertinent
part, that "[n]o 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 . ..."

9. Health and Safety Code section 11173, subdivision (c) states that no
 person shall make a false statement in any prescription order, report, or record required by this
 division.

13 10. Section 118(b), states, in pertinent part, that the expiration or surrender of
14 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during
15 the period within which the license may be renewed, restored, reissued or reinstated.

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

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#### CONTROLLED SUBSTANCES AT ISSUE

21 12. "Hydromorphone" (Dilaudid) is a Schedule II controlled substance as
22 designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

13. "Amphetamine" (Adderal) is a Schedule II controlled substance as
designated by Health and Safety Code section 11055(d)(1), and is a dangerous drug pursuant to
Business and Professions Code section 4022.

26 14. "Lorazepam" (Ativan) is a Schedule II controlled substance as designated
27 by Health and safety Code section 11055(b)(1)(m).

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1	15. "Zolpidem" (Ambien) is a Schedule IV controlled substance as
2	designated by Health and Safety Code section 11507(d)(32), and is a dangerous drug pursuant to
3	Business & Professions Code section 4022.
4	FIRST CAUSE FOR DISCIPLINE
5	(Unprofessional Conduct - Diversion of Drugs)
6	16. Respondent is subject to disciplinary action on the grounds of
7	unprofessional conduct, as defined in Code section 4301(f), in that on or about and between
8	November 24, 2007 and December 9, 2007, while on duty as a pharmacy technician at Henry
, 9	Mayo Newhall Memorial Hospital, Respondent unlawfully appropriated the following controlled
10	substances from her employer by withdrawing said controlled substances from Pyxis (Automated
11	Dispensing Machine) and never delivering the controlled substances to the Medstations:
12	a. On November 24, 2007, at approximately 1117 hours, Respondent
13	withdrew ten (10) Hydromorphone 4 mg inj.
14	b. On November 24, 2007, at approximately 1443 hours, Respondent
15	withdrew ten (10) Hydromorphone 4 mg inj.
16	c. On December 9, 2007, at approximately 0902 hours, Respondent
17	withdrew ten (10) Zolpidem 5 mg.
18	d. On December 9, 2007, Respondent withdrew two (2) Adderal 10 mg.
19	c. On December 9, 2007, at 1517 hours, Respondent withdrew ten (10)
20	Lorazepam 1 mg.
21	On December 11, 2007, Respondent was interviewed by her employer regarding
22	the missing drugs and Respondent admitted to her employer that she stole the above listed drugs.
23	Respondent refused to take a drug test and was terminated the same day by her employer.
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1	SECOND CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct - Unlawful Possession of a Controlled Substance)
3	17. Respondent is subject to disciplinary action on the grounds of
4	unprofessional conduct, as defined in Code section 4301(j), in that on or about and between
5	November 24, 2007 and December 9, 2007, while on duty as a pharmacy technician at Henry
6	Mayo Newhall Memorial Hospital, Respondent unlawfully possessed controlled substances.
. 7	(See paragraph 16 for details of the unlawful possession of controlled substances.)
8	PRAYER
9	WHEREFORE, Complainant requests that a hearing be held on the matters herein
10	alleged, and that following the hearing, the Board of Pharmacy issue a decision:
11	A. Revoking or suspending Original Technician Registration Number
12	TCH 21218, issued to Melissa Carmel Davis;
13	B. Ordering Melissa Carmel Davis to pay the Board of Pharmacy the
14	reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15	Professions Code section 125.3;
16	C. Taking such other and further action as deemed necessary and proper.
17	DATED: 8/20/09
18 19	
20	VIRGINIA HEROLD
21	Executive Officer Board of Pharmacy
22	Department of Consumer Affairs State of California
23	Complainant
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