

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

In the Matter of the Accusation Against:

Case No. 3290

JOEL ROBERT SMITH
34937 Acacia Ave.
Yucaipa, CA 92399

Original Pharmacy Technician
Registration No. TCH 46392

Respondent.

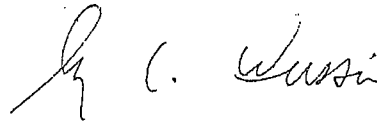
DECISION AND ORDER

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 July 23, 2010.

It is so ORDERED on June 23, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARC GREENBAUM
Supervising Deputy Attorney General
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7

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

10 In the Matter of the Accusation Against:

Case No. 3290

11 **JOEL ROBERT SMITH**
12 34937 Acacia Ave.
Yucaipa, CA 92399
13 Pharmacy Technician Registration No. TCH
46392

OAH No. L-2009071022

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Respondent.
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16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Edmund
22 G. Brown Jr., Attorney General of the State of California, by Kimberley J. Baker-Guillemet,
23 Deputy Attorney General.

24 2. Joel Robert Smith (Respondent) is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about December 3, 2002, the Board of Pharmacy issued Pharmacy Technician
27 Registration No. TCH 46392 to Joel Robert Smith. The was in full force and effect at all times
28

1 relevant to the charges brought in Accusation No. 3290 and will expire on May 31, 2010, unless
2 renewed.

3 **JURISDICTION**

4 4. Accusation No. 3290 was filed before the Board of Pharmacy (Board), Department
5 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on June 24, 2009.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 3290 is attached as exhibit A and incorporated herein by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 3290. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

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

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

22 **CULPABILITY**

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 3290, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
25 Registration No. TCH 46392 for the Board's formal acceptance.

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

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CONTINGENCY

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

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

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

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board of Pharmacy may, without further notice or formal proceeding, issue and enter the
22 following Order:

ORDER

23
24 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 46392, issued
25 to Respondent Joel Robert Smith is surrendered and accepted by the Board of Pharmacy.

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

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

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

7 17. Respondent fully understands and agrees that if he ever files an application for
8 licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new
9 application. Respondent must comply with all the laws, regulations and procedures for new
10 applications in effect at the time the petition is filed, and all of the charges and allegations
11 contained in Accusation No. 3290 shall be deemed to be true, correct and admitted by Respondent
12 when the Board determines whether to grant or deny the petition.

13 18. Should Respondent ever apply or reapply for a new license or certification, or petition
14 for reinstatement of a license, by any other health care licensing agency in the State of California,
15 all of the charges and allegations contained in Accusation, No. 3290 shall be deemed to be true,
16 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
17 proceeding seeking to deny or restrict licensure.

18 19. Respondent shall pay the Board its costs of investigation and enforcement in the
19 amount of \$10,943 (ten thousand nine hundred forty-three dollars) prior to issuance of a new or
20 reinstated license.

21 20. Respondent shall not apply for licensure or petition for reinstatement for three (3)
22 years from the effective date of the Board of Pharmacy's Decision and Order.

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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: 01/11/10



JOEL ROBERT SMITH
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: December 28, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
MARC GREENBAUM
Supervising Deputy Attorney General



KIMBERLEY J. BAKER-GUILLEMET
Deputy Attorney General
Attorneys for Complainant

LA2009602870
Stipulation.rtf

Exhibit A

Accusation No. 3290

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KRISTI GUDOSKI COOK, State Bar No. 185257
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 620-6343
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6

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 JOEL ROBERT SMITH
34937 Acacia Ave.
13 Yucaipa, CA 92399
Pharmacy Technician Registration No. TCH
14 46392

Case No. 3290

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about December 3, 2002, the Board of Pharmacy (Board) issued
23 Pharmacy Technician Registration Number TCH 46392 to Joel Robert Smith (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on May 31, 2010, unless renewed.

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1 JURISDICTION

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

5 STATUTORY PROVISIONS

6 4. Section 4300, subdivision (a), states: "Every license issued may be
7 suspended or revoked."

8 5. Section 4301 states, in pertinent part:

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

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

18 "(j) The violation of any of the statutes of this state, of any other state, or of the
19 United States regulating controlled substances and dangerous drugs.

20

21 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violation of or conspiring to violate any provision or term of this chapter [the
23 Pharmacy Law (§ 4000, et seq.)] or of the applicable federal and state laws and regulations
24 governing pharmacy, including regulations established by the board or by any other state or
25 federal regulatory agency."

26 6. Section 4059, subdivision (a), states:

27 "A person may not furnish any dangerous drug except upon the prescription of a
28 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to

1 Section 3640.7. A person may not furnish any dangerous device, except upon the prescription
2 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
3 Section 3640.7.”

4 7. Section 4060 states, in pertinent part:

5 "No person shall possess any controlled substance, except that furnished to a
6 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
7 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a
8 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section
9 2836.1, or a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to
10 Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or
11 clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
12 section shall not apply to the possession of any controlled substance by a manufacturer,
13 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
14 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in
15 stock in containers correctly labeled with the name and address of the supplier or producer.

16 8. Health and Safety Code section 11158, subdivision (a), states, in pertinent
17 part: "Except as provided in Section 11159 or in subdivision (b) of this section, no controlled
18 substance classified in Schedule II shall be dispensed without a prescription meeting the
19 requirements of this chapter.”

20 9. Health and Safety Code section 11170 states: "No person shall prescribe,
21 administer, or furnish a controlled substance for himself.”

22 10. Health and Safety Code section 11173, subdivision (a), states:

23 "No person shall obtain or attempt to obtain controlled substances, or procure or
24 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
25 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

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1 refers to and incorporates all the allegations set forth in paragraphs 15.a. through 15.b, and 16.a.
2 through 16.b, inclusive, as though set forth fully.

3 PRAYER

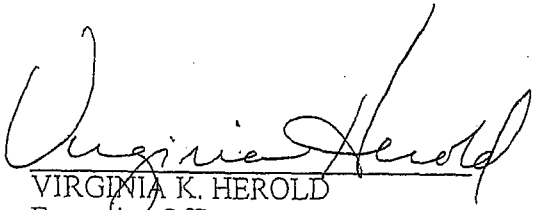
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH
7 46392, issued to Joel Robert Smith.

8 2. Ordering Joel Robert Smith to pay the Board the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3; and

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

12
13 DATED: 6/12/09



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

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