

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

In the Matter of the Accusation Against:

Case No. 3605

RITA JEANINE GARIBALDI
230 Catamaran Way
Vacaville, CA 95688

Pharmacy Technician License No. TCH 48059

Respondent.

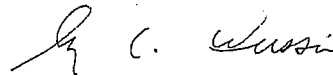
DECISION AND ORDER

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 April 15, 2011.

It is so ORDERED March 16, 2011.

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 FRANK H. PACOE
Supervising Deputy Attorney General
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455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3605

11 **RITA JEANINE GARIBALDI**
12 **230 Catamaran Way**
13 **Vacaville, CA 95688**

STIPULATED SURRENDER OF
LICENSE AND ORDER

14 **Pharmacy Technician License No. TCH 48059**

15 Respondent.

16
17 In the interest of a prompt and speedy resolution of this matter, consistent with the public
18 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
19 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
20 submitted to the Board for approval and adoption as the final disposition of the Accusation.

21
22 PARTIES

23 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
24 this action solely in her official capacity and is represented in this matter by Edmund G. Brown
25 Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

26 2. Rita Jeanine Garibaldi (Respondent) is representing herself in this proceeding and has
27 chosen not to exercise her right to be represented by counsel.

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1 3. On or about March 18, 2003, the Board of Pharmacy issued Pharmacy Technician
2 License No. TCH 48059 to Rita Jeanine Garibaldi (Respondent). The Pharmacy Technician
3 License was in full force and effect at all times relevant to the charges brought in Accusation No.
4 3605 and will expire on August 31, 2012, unless renewed.

6 JURISDICTION

7 4. Accusation No. 3605 was filed before the Board of Pharmacy (Board), Department of
8 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
9 statutorily required documents were properly served on Respondent on October 1, 2010.
10 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation
11 No. 3605 is attached as exhibit A and incorporated by reference.

13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, and understands, the charges and allegations in
15 Accusation No. 3605. Respondent has also carefully read, and understands, the effects of this
16 Stipulated Surrender of License and Order.

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

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

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 3605, agrees that cause exists for discipline, and hereby surrenders her Pharmacy Technician
4 License No. TCH 48059 for the Board's formal acceptance.

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

8 CONTINGENCY

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

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

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

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

28 ///

ORDER

1
2 IT IS HEREBY ORDERED that Pharmacy Technician License No: TCH 48059, issued to
3 Respondent Rita Jeanine Garibaldi, is surrendered and accepted by the Board of Pharmacy.

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

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

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

12 17. Respondent may not apply, reapply, or petition for any licensure or registration of the
13 Board for three (3) years from the effective date of the Decision and Order.

14 18. If Respondent ever applies for licensure or petitions for reinstatement in the State of
15 California, the Board shall treat it as a new application for licensure. Respondent must comply
16 with all the laws, regulations and procedures for licensure in effect at the time the application or
17 petition is filed, and all of the charges and allegations contained in Accusation No. 3605 shall be
18 deemed to be true, correct and admitted by Respondent when the Board determines whether to
19 grant or deny the application or petition.

20 19. If Respondent should ever apply or reapply for a new license or certification, or
21 petition for reinstatement of a license, by any other health care licensing agency in the State of
22 California, all of the charges and allegations contained in Accusation, No. 3605 shall be deemed
23 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
24 other proceeding seeking to deny or restrict licensure.

25 20. Respondent shall pay the Board its costs of investigation and enforcement in the
26 amount of \$3,687.50 prior to issuance of a new or reinstated license.

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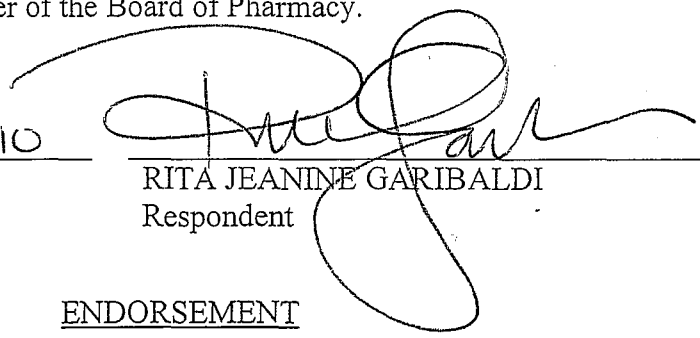
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ACCEPTANCE

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 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:

12/16/2010



RITA JEANINE GARIBALDI
Respondent

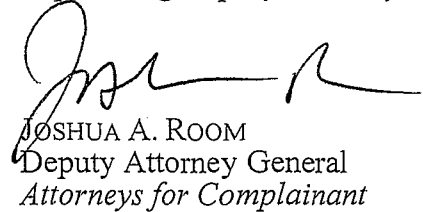
ENDORSEMENT

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: 12/30/2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3605

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
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13 **Vacaville, CA 95688**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 48059**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about March 18, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 48059 to Rita Jeanine Garibaldi (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on August 31, 2012, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 8. California Code of Regulations, title 16, section 1770, states:

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

8 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
9 drug or dangerous device except upon the prescription of an authorized prescriber.

10 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
11 controlled substance, except that furnished upon a valid prescription/drug order.

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

14 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
15 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
16 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
17 or subterfuge; or (2) by the concealment of a material fact.

18 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
19 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
20 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

21 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
22 for sale or purchase for sale any controlled substance classified in Schedule III, IV, or V (Health
23 and Safety Code sections 11056, 11057, or 11058) which is a narcotic drug.

24 COST RECOVERY

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

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1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 16. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 17. Section 4022 of the Code states, in pertinent part:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
7 except veterinary drugs that are labeled as such, and includes the following:

8 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
9 prescription,’ ‘Rx only,’ or words of similar import.

10 ...

11 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
12 prescription or furnished pursuant to Section 4006.”

13 18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
14 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
15 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
16 drug as designated by Business and Professions Code section 4022. The varying compounds are
17 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

18 FACTUAL BACKGROUND

19 19. Between in or about October 2006 and in or about October 2008, Respondent was
20 employed as a pharmacy technician at Owens Pharmacy No. 7 (PHY 46024) in Napa, CA, where
21 by virtue of her employment she had access to controlled substances and dangerous drugs.

22 20. During the tenure of her employment by Owens Pharmacy No. 7, Respondent used
23 her access to divert/steal controlled substances and dangerous drugs, including **Norco** and/or
24 other **Hydrocodone with APAP** controlled substance/dangerous drug products.

25 21. The exact number of instances of diversion/theft by Respondent, and the full quantity
26 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in
27 the course of investigations conducted by the pharmacy and by police, the following were among
28 the observations, admissions, and revelations reported:

1 a. After pharmacy auditors/investigators identified what they believed were thefts
2 by one or more employees between in or about May 2008 and in or about September 2008 of
3 approximately sixty (60) 500-tablet bottles of **Norco** (and/or generic **Hydrocodone**-containing
4 equivalents), they installed surveillance cameras in the pharmacy in late September 2008. The
5 cameras showed Respondent engaged in suspicious behavior with regard to **Hydrocodone** drugs.

6 b. Respondent subsequently admitted to police investigators that sometime during
7 her employment by Owens Pharmacy No. 7, she began taking un-opened bottles (containing 500
8 tablets) of **Norco** (and/or its generic equivalents) and selling them to an individual for a price of
9 \$900.00 per bottle. She said that she did this repeatedly, though did not identify a total number.
10 She said that she was motivated by the money she made in these transactions.

11 c. Subsequent audit(s) of the controlled substances stock of Owens Pharmacy No.
12 7 revealed a shortage of approximately 35,237 tablets of **Norco** and/or **Hydrocodone with APAP**
13 **10/325** (generic **Norco**) for the period from May 2008 through September 2008, and an additional
14 shortage of approximately 70,900 tablets of **Norco** and/or its generic equivalents from April 2007
15 to May 2008, for a total documented shortage/loss of approximately 106,137 tablets.

16
17
18 FIRST CAUSE FOR DISCIPLINE

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

20 22. Respondent is subject to discipline under section 4301(f) of the Code, in that
21 Respondent, as described in paragraphs 19 to 21 above, committed numerous acts involving
22 moral turpitude, dishonesty, fraud, deceit, or corruption.

23 SECOND CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance(s))

25 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
27 in paragraphs 19 to 21 above, furnished to herself or another without a valid prescription, and/or
28 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

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THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 19 to 21 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

25. 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 19 to 21 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.

FIFTH CAUSE FOR DISCIPLINE

(Possession or Purchase of Controlled Substance(s) for Sale)

26. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11351, in that Respondent, as described in paragraphs 19 to 21 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or assisted in or abetted the possession or purchase for sale, of a controlled substance.

SIXTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

27. 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 on or about January 29, 2010, in the criminal case *People v. Rita Jeanine Garibaldi*, Case No. CR146087 in Napa County Superior Court, Respondent was convicted on the basis of the conduct described in paragraphs 19 to 21 above of violating Penal Code section 487(a) (Grand theft of personal property over \$400.00), a felony, as follows:

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///

1 a. On or about May 15, 2009, based on the conduct described in paragraphs 19 to
2 21 above, Respondent was charged by criminal Complaint in Case No. CR146087 with violating
3 Penal Code section 487(a) (Grand theft of personal property over \$400.00), a felony. On or about
4 July 27, 2009, an Information was filed containing the same charge but an amended factual basis.

5 b. On or about January 29, 2010, in Case No. CR146087, Respondent pleaded no
6 contest to violating Penal Code section 487(a) (Grand theft over \$400.00), a felony.

7 c. On or about March 2, 2010, imposition of sentence was suspended in favor of a
8 period of formal probation of three (3) years on terms and conditions including one hundred and
9 twenty (120) days in county jail, fines and fees, and other standard terms and conditions.

10 SEVENTH CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct)

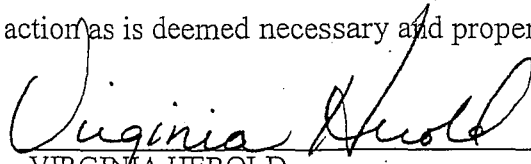
12 28. Respondent is subject to discipline under section 4301 of the Code in that
13 Respondent, as described in paragraphs 19 to 27 above, engaged in unprofessional conduct.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Pharmacy issue a decision:

- 17 1. Revoking or suspending Pharmacy Technician License No. TCH 48059, issued to
18 Rita Jeanine Garibaldi (Respondent);
19 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
20 enforcement of this case, pursuant to Business and Professions Code section 125.3;
21 3. Taking such other and further action as is deemed necessary and proper.

22 DATED: 9/23/10

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