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

In	the	Matter	of	the	Accusation	Against:
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Case No. 3654

DALE HERZ

15231 Magnolia #220 Sherman Oaks, CA 91403

Pharmacy Technician Registration No. TCH 22940

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 8, 2013.

It is so ORDERED on June 7, 2013.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

STANLEY C. WEISSER Board President

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1	KAMALA D. HARRIS						
2	Attorney General of California GREGORY J. SALUTE	•					
3	Supervising Deputy Attorney General ALVARO MEJIA						
	Deputy Attorney General						
4	State Bar No. 216956 300 So. Spring Street, Suite 1702						
5	Los Angeles, CA 90013						
6	Telephone: (213) 897-0083 Facsimile: (213) 897-2804	•					
7	Attorneys for Complainant						
8	BEFORE THE BOARD OF PHARMACY						
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA						
10		7					
	In the Matter of the Accusation Against:	Case No. 3654					
11	DALE CURTIS HERZ	OAH No. L-2011120662					
12	15231 Magnolia #220 Sherman Oaks, CA 91403	STIPULATED SURRENDER OF					
13	,	LICENSE AND ORDER					
14	Pharmacy Technician License No. TCH 22940	·					
15	Respondent.						
16							
17	IT IS HEREBY STIPULATED AND AG	REED 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 Kamala						
.22							
23	D. Harris, Attorney General of the State of California, by Alvaro Mejia, Deputy Attorney						
	General.)					
24	2. Dale Curtis Herz ("Respondent") is represented in this proceeding by attorney Sharer						
25	H. Ghatan, whose address is 9025 Wilshire Blvd., Suite 301, Beverly Hills, CA 90211.						
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28	111						

3. On or about June 25, 1997, the Board of Pharmacy issued Pharmacy Technician License No. TCH 22940 to Respondent Dale Curtis Herz. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 3654 and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3654 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 April 29, 2011.

Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3654 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 3654. Respondent also has carefully read, fully discussed with counsel, 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.

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 3654, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacy Technician License.

- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.
- 10. 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 process.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

- 12. This stipulation shall be subject to approval by the Board of Pharmacy. 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 or his counsel. 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.
- 13. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 14. 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.

15. 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 22940, issued to Respondent Dale Curtis Herz, is surrendered and accepted by the Board of Pharmacy.

- 1. 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 of Pharmacy.
- 2. 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.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.
- 5. 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. 3654 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 6. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$5,000.00 prior to issuance of a new or reinstated license.

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III

<u>ACCEPTANCE</u>

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Sharen H. Ghatan. 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: 6-7-12

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DALE CURTIS HERZ

Respondent

I have read and fully discussed with Respondent Dale Curtil Herz the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 6/7/12

SHAREN H. GHATAN, ESQ. Attorney for 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: $(\varphi/\gamma//2)$

Respectfully submitted,

KAMALA D. HARRIS Attorney General of California

GREGORY J. SALUTE Supervising Deputy Attorney General

ALVARO MEJIA

Deputy Attorney General

Attorneys for Complainant

28 DOJ Matter ID; LA2010501684

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Exhibit A

Accusation No. 3654

	·							
1	KAMALA D. HARRIS, Attorney General of California	1 1 Millianning of the Commission of						
2	Marc D. Greenbaum Supervising Deputy Attorney General							
3	GILLIAN E. FRIEDMAN Deputy Attorney General							
4	State Bar No. 169207 300 So. Spring Street, Suite 1702							
5	Los Angeles, CA 90013 Telephone: (213) 897-2564	•						
6	Facsimile: (213) 897-2804							
7	Attorneys for Complainant							
8	BEFORE THE							
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA							
10	STATE OF	LALIFURNIA						
11	In the Motter of the Acquestion Against	Case No. 3654						
12	In the Matter of the Accusation Against:							
13	DALE CURTIS HERZ 15231 Magnolia #220	ACCUSATION						
14	Sherman Oaks, CA 91403							
15	Pharmacy Technician License No. TCH 22940							
16	Respondent.							
17	***************************************							
18	Complainant alleges:							
19	PAR	TIES						
20	Virginia Herold (Complainant) bring	gs this Accusation solely in her official capacity						
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.							
22	2. On or about June 25, 1997, the Board of Pharmacy (Board) issued Pharmacy							
23	Technician License No. TCH 22940 to Dale Curtis Herz (Respondent). The Pharmacy							
24	Technician License was in full force and effect at all times relevant to the charges brought herein							
25	and will expire on December 31, 2012.							
26	JURISDIC	CTION						
27	3. This Accusation is brought before th	e Board under the authority of the following						
28	laws. All section references are to the Business	laws. All section references are to the Business and Professions Code unless otherwise indicated						

STATUTORY PROVISIONS

- 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 5. Section 4059, subdivision (a) states, in pertinent part:

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

6. Section 4060 states, in pertinent part:

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

- 7. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.
 - 8. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not 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 any other 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 or by any other state or federal regulatory agency."
 - 9. Health and Safety Code section 11350, subdivision (a), states:

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison."

COST RECOVERY

10. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing

case.

11. CONTROLLED SUBSTANCES

a. "Adderall," is the brand name for Amphetamine. It is a Schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (d)(1) and is categorized as a dangerous drug pursuant to section 4022.

act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the

- b. "Alprazolam," is the generic name for Xanax. It is a Schedule IV controlled substance as defined in Health and Safety Code section 11057, subdivision (d)(1) and is categorized as a dangerous drug pursuant to section 4022.
- c. "Oxycontin," is a Schedule II controlled substance as defined in Health and Safety Code section 11055(b)(1)(N) and is categorized as a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Obtained or Possessed a Controlled Substance)

- 12. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o), in that the Respondent was found to be in possession of controlled substances, in violation of section 4060 and Health and Safety Code section 11350, subdivision (a). At all times relevant herein, Respondent was employed as a pharmacy technician at Maxson's Drugs, in Sherman Oaks, CA. The circumstances of the violations are as follows:
- 13. On or about October 26, 2009, the Los Angeles Police Department found 40 tablets of OxyContin in various strengths in Respondent's car and 13 additional pills identified as follows: six 40mg. OxyContin tablets, three 80mg. OxyContin tablets, three Adderall tablets, one Aprazolam tablet and one unidentified capsule in Respondent's pant's pocket. Respondent did not have a valid prescription for the controlled substances.
- 14. Respondent admitted that he unlawfully took the OxyContin tablets from his pharmacy employer without permission to do so. He had taken OxyContin tablets from work on a weekly basis for at "least a couple of months" Respondent stole the pills for himself and also provided them to friends.

15. Respondent was arrested for violating Health and Safety Code section 11352

PRAYER

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

- 1. Revoking or suspending Pharmacy Technician License No. TCH 22940, issued to Respondent;
- 2. Ordering Respondent to pay the Board reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 4/18/11

VIRGINIA/HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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