

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

In the Matter of the Accusation Against:

Case No. 3663

BRIAN JAMES POKORNY
6220 Owensmouth Ave. #103
Woodland Hills, CA 91367

Pharmacy Technician Registration No. TCH
11175

Respondent.

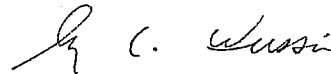
DECISION AND ORDER

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 November 23, 2011.

It is so ORDERED October 24, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 STEPHEN A. MILLS
Deputy Attorney General
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300 So. Spring Street, Suite 1702
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Attorneys for Complainant
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. 3663

11 **BRIAN JAMES POKORNY**
12 **6220 Owensmounth Ave. #103**
13 **Woodland Hills, CA 91367**
14 **Pharmacy Technician Registration No. TCH**
11175

OAH No. L-2010121002

STIPULATED SURRENDER OF
LICENSE AND ORDER

15 Respondent.

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

18 PARTIES

19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
20 She brought this action solely in her official capacity and is represented in this matter by Kamala
21 D. Harris, Attorney General of the State of California, by Stephen A. Mills, Deputy Attorney
22 General.

23 2. Brian James Pokorny (Respondent) is represented in this proceeding by attorney Lyle
24 F. Greenberg, whose address is 6320 Canoga Avenue, Suite 1400, Woodland Hills, CA 91367-
25 2562

26 3. On or about December 27, 1993, the Board of Pharmacy issued Pharmacy Technician
27 Registration No. TCH 11175 to Brian James Pokorny. The Pharmacy Technician Registration

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1 was in full force and effect at all times relevant to the charges brought in Accusation No. 3663
2 and will expire on October 31, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3663 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent. Respondent timely filed his
7 Notice of Defense contesting the Accusation. A copy of Accusation No. 3663 is attached as
8 Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 3663. Respondent also has carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
13 Order.

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

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

23
24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 3663, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
27 Registration No. TCH 11175 for the Board's formal acceptance.

28 ///

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

3 RESERVATION

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

8 CONTINGENCY

9 11. 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 or his counsel. By signing the stipulation, Respondent understands
13 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the
14 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
15 Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or
16 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
17 and the Board shall not be disqualified from further action by having considered this matter.

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

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

27 ///

28 ///

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

3
4 ORDER

5 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 11175, issued
6 to Respondent Brian James Pokorny, is surrendered and accepted by the Board of Pharmacy.

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

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

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

15 17. Respondent surrenders pharmacy technician license number TCH 11175 as of the
16 effective date of this decision. Respondent shall relinquish his or her pharmacy technician license
17 to the board within ten (10) days of the effective date of this decision.

18 The surrender of respondent's license and the acceptance of the surrendered license by the
19 board shall constitute the imposition of discipline against respondent. This decision constitutes a
20 record of discipline and shall become a part of respondent's license history with the board.

21 Respondent understands and agrees that if he or she ever files an application for licensure
22 or a petition for reinstatement in the State of California, the board shall treat it as a new
23 application for licensure.

24 Respondent may not apply for any license, permit, or registration from the board for three
25 (3) years from the effective date of this decision. Respondent stipulates that should he or she
26 apply for any license from the board on or after the effective date of this decision, all allegations
27 set forth in the [accusation or petition to revoke probation] shall be deemed to be true, correct and
28 admitted by respondent when the board determines whether to grant or deny the application.

1. Respondent shall fulfill all requirements applicable to that license as of the date the application is
2. submitted to the board, including, but not limited to certification by a nationally recognized body
3. prior to the issuance of a new license. Respondent is required to report this surrender as
4. disciplinary action.

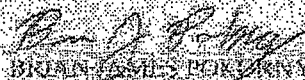
5. Respondent stipulates that should he or she apply for any license from the board on or after
6. the effective date of this decision, investigation and prosecution costs in the amount of four
7. thousand (\$4,000) dollars shall be paid to the board prior to issuance of the license.

8. If Respondent should ever apply or reapply for a new license or certification, or
9. petition for reinstatement of a license, by any other health care licensing agency in the State of
10. California, all of the charges and allegations contained in Accusation No. 3663 shall be deemed
11. to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
12. other proceeding seeking to deny or restrict licensure.

13. ACCEPTANCE

14. I have carefully read the above Stipulated Surrender of License and Order and have fully
15. discussed it with my attorney, Lyle F. Greenberg. I understand the stipulation and the effect it
16. will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of
17. License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18. Decision and Order of the Board of Pharmacy.

19. DATED: 6-26-11

20. 
21. BRIAN JAMES POKORNY
22. Respondent

23. I have read and fully discussed with Respondent Brian James Pokorny the terms and
24. conditions and other matters contained in this Stipulated Surrender of License and Order. I
25. approve its form and content.

26. DATED: 6-26-11

27. 
28. LYLE F. GREENBERG
29. Attorney for Respondent

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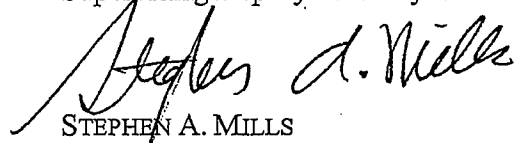
ENDORSEMENT

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: June ²⁷~~23~~, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



STEPHEN A. MILLS
Deputy Attorney General
Attorneys for Complainant

LA2010600495
Stipulation.rtf

Exhibit A

Accusation No. 3663

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 STEPHEN A. MILLS
Deputy Attorney General
4 State Bar No. 54145
300 SO. SPRING STREET, SUITE 1702
5 LOS ANGELES, CA 90013
TELEPHONE: (213) 897-2539
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13 **BRIAN JAMES POKORNY**
6220 Owensmounth Ave. #103
Woodland Hills, CA 91367

ACCUSATION

14 Pharmacy Technician Registration No. TCH 11175

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 27, 1993, the Board issued Pharmacy Technician Registration
23 No. TCH 11175 to Brian James Pokorny (Respondent). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2011, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 5. Section 490 provides that a board may suspend or revoke a license on the ground that
7 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
8 duties of the business or profession for which the license was issued..

9 6. Section 492 states:

10 "Notwithstanding any other provision of law, successful completion of any diversion
11 program under the Penal Code, or successful completion of an alcohol and drug problem
12 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
13 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
14 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
15 division, from taking disciplinary action against a licensee or from denying a license for
16 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
17 record pertaining to an arrest.

18 "This section shall not be construed to apply to any drug diversion program operated by any
19 agency established under Division 2 (commencing with Section 500) of this code, or any
20 initiative act referred to in that division."

21 7. Section 4059, subdivision (a), states:

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

26 8. Section 4060 states:

27 "No person shall possess any controlled substance, except that furnished to a person upon
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
9 labeled with the name and address of the supplier or producer.

10 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
11 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
12 devices."

13 9. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
14 revoked."

15 10. Section 4301 states, in pertinent part:

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

18 Unprofessional conduct shall include, but is not limited to, any of the following:

19

20 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
21 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
22 whether the act is a felony or misdemeanor or not.

23 "(g) Knowingly making or signing any certificate or other document that falsely
24 represents the existence or nonexistence of a state of facts.

25 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
28 to the extent that the use impairs the ability of the person to conduct with safety to the public the

1 practice authorized by the license.

2

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

5 "(k) The conviction of more than one misdemeanor or any felony involving the use,
6 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
7 combination of those substances.

8 "(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the crime, in order
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment.

25

26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy, including regulations established by

1 the board or by any other state or federal regulatory agency. . . .”

2 **REGULATORY PROVISIONS**

3 11. California Code of Regulations, title 16, section 1770, states:

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

10 **COST RECOVERY**

11 12. Section 125.3 provides that the Board may request the administrative law judge to
12 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
13 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

14 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

15 13. Norco and Vicodin are trade names for the narcotic substance hydrocodone or
16 dihydrocodeinone with the non-narcotic substance acetaminophen. They are Schedule III
17 controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are dangerous
18 drugs within the meaning of section 4022.

19 **DE SOTO PHARMACY**

20 14. In and between the years 2004 through April 13, 2009, Respondent was employed as
21 a pharmacy technician at De Soto Pharmacy and Soda Shoppe, 20914 Roscoe Boulevard, Canoga
22 Park, California 91304 (De Soto Pharmacy). In or about April 2009, De Soto Pharmacy initiated
23 an internal pharmacy investigation regarding pharmacy losses. On or about April 11, 2009,
24 Respondent was viewed via video surveillance removing from pharmacy shelves and premises a
25 500 count bottle of Norco and taking it out to his vehicle. On or about April 13, 2009,
26 Respondent was confronted and admitted to the theft. On or about April 19, 2009, De Soto
27 Pharmacy completed its inventory of Hydrocodone, Norco and Vicodin, losses and reported the
28 loss to police and Federal Drug Enforcement Administration. De Soto's filed "Report of Theft or

1 Loss of Controlled Substances" acknowledged losses of 43,000 tablets of Norco and 62,000
2 tablets of Vicodin ES, on and between May 27, 2007 and April 15, 2009.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially Related Crime)**

5 15. Respondent is subject to disciplinary action under sections 490 and 4301,
6 subdivision (I), in that on or about September 9, 2009, Respondent sustained a conviction of a
7 crime substantially related to the qualifications, functions, and duties of a registered pharmacy
8 technician, as follows:

9 a. On or about September 9, 2009, after pleading guilty, Respondent was convicted of
10 the interlineated felony count of violating Health and Safety Code section 11377(a) [possession of
11 a controlled substance] in the criminal proceeding entitled *The People of the State of California v.*
12 *Brian James Pokorny* (Super. Ct. Los Angeles County, 2009, No. LA062013). The Court placed
13 Respondent on Deferred Entry of Judgment for 18 months.

14 b. The circumstances underlying the conviction are that on or about April 13, 2009,
15 Respondent admitted to taking, while employed and on-duty as a pharmacy technician at De Soto
16 Pharmacy without a valid prescription, a pharmacy stock 500 tablet bottle of Norco, a controlled
17 substance and dangerous drug, out to his parked vehicle before the pharmacy's time of closing on
18 or about April 11, 2009.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Felony Drug Conviction)**

21 16. Respondent is subject to disciplinary action under section 4301, subdivision (k), on
22 the grounds of unprofessional conduct, in that on or about September 9, 2009, Respondent was
23 convicted of a felony involving the use, consumption, or self-administration of controlled
24 substances and dangerous drugs. Complainant refers to and by this reference incorporates the
25 allegations set forth above in paragraph 15, subparagraphs a and b, inclusive, as though set forth
26 fully.

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of Controlled Substances)**

3 17. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
4 the grounds of unprofessional conduct, for violating sections 4059, subdivision (a), and 4060 and
5 Health and Safety Code section 11377, subdivision (a), in that on or about April 11, 2009, he
6 possessed and / or furnished to himself 500 tablets of Norco, a controlled substance and
7 dangerous drug, without a valid prescription. Complainant refers to and by this reference
8 incorporates the allegations set forth above in paragraphs 14 - 16, inclusive, as though set forth
9 fully.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Drugs / Unlawful Furnishing)**

12 18. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
13 the grounds of unprofessional conduct, in that on or about April 11, 2009, Respondent used
14 dangerous drugs to the extent or in a manner as to be dangerous or injurious to or the public when
15 he furnished himself and possessed 500 tablets of Norco, a controlled substance and dangerous
16 drug, without a valid prescription. Complainant refers to and by this reference incorporates the
17 allegations set forth above in paragraphs 14 - 17, inclusive, as though set forth fully.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Making False Pharmacy Records)**

20 19. Respondent is subject to disciplinary action under section 4301, subdivision (g), on
21 the grounds of unprofessional conduct, in that on or about April 11, 2009, Respondent created a
22 false state of facts in pharmacy records by taking without a valid prescription 500 tablets of
23 Norco. Complainant refers to and by this reference incorporates the allegations set forth above in
24 paragraphs 14 – 18, inclusive, as though set forth fully.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 20. Respondent is subject to disciplinary action under section 4301, subdivision (f), on
28 the grounds of unprofessional conduct, in that Respondent committed acts involving moral

1 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
2 incorporates the allegations set forth above in paragraphs 14 – 19, inclusive, as though set forth
3 fully.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct / Violating Pharmacy Law)**

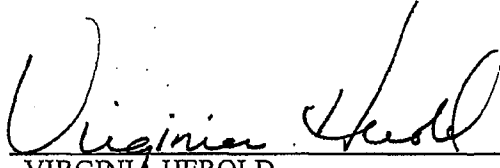
6 21. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
7 that Respondent committed acts of unprofessional conduct violating pharmacy law. Complainant
8 refers to and by this reference incorporates the allegations set forth above in paragraphs 14 - 20,
9 inclusive, as though set forth fully.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 11175, issued
14 to Respondent;
- 15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
16 enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: 10/5/10



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

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