

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

In the Matter of the Accusation Against:

Case No. 3956

COLLEEN MARY WHITTAKER

149 Olive Street, #38
Paso Robles, CA 93446

Pharmacy Technician License No. TCH 78790

Respondent.

DECISION AND ORDER

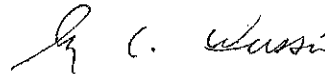
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 15, 2012.

It is so ORDERED on September 14, 2012.

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

11 In the Matter of the Accusation Against:

Case No. 3956

12 **COLLEEN MARY WHITTAKER**
13 149 Olive St., #15
Paso Robles, Ca 93446
14 Pharmacy Technician License No. TCH 78790

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

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 Kamala
22 D. Harris, Attorney General of the State of California, by Shawn P. Cook, Deputy Attorney
23 General:

24 2. Colleen Mary Whittaker (Respondent) is representing herself in this proceeding and
25 has chosen not to exercise her right to be represented by counsel.

26 3. On or about August 2, 2008, the Board of Pharmacy issued Pharmacy Technician
27 License No. TCH 78790 to Colleen Mary Whittaker (Respondent). The Pharmacy Technician
28

1 License was in full force and effect at all times relevant to the charges brought in Accusation No.
2 3956 and will expire on October 31, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3956 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 on October 13, 2011.
7 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 3956 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 3956. 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 her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to
16 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
17 compel the attendance of witnesses and the production of documents; the right to reconsideration
18 and 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 understands that the charges and allegations in Accusation No. 3956, if
24 proven at a hearing, constitute cause for imposing discipline upon her Pharmacy Technician
25 License.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of
27 further proceedings, Respondent admits that at hearing Complainant could establish a factual
28 basis for the charges and allegation in Accusation No. 3956, and that those charges and

1 allegations are cause for discipline. Respondent hereby gives up her right to contest those
2 charges and allegations

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

5 CONTINGENCY

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

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

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

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

26 ORDER

27 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 78790, issued to
28 Respondent Colleen Mary Whittaker, is surrendered and accepted by the Board of Pharmacy.

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ENDORSEMENT

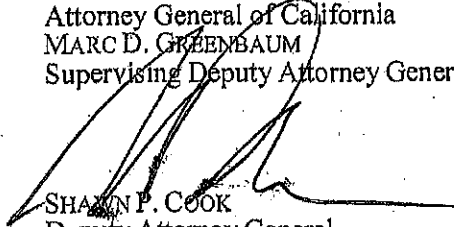
The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

8/2/12

Respectfully submitted,

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



SHANN P. COOK
Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

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11 In the Matter of the Accusation Against:

Case No. 3956

12 **COLLEEN MARY WHITTAKER**
149 Olive St., #38
13 Paso Robles, CA 93446

A C C U S A T I O N

14 Pharmacy Technician License No. TCH 78790

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about August 2, 2008, the Board issued Pharmacy Technician License No.
21 TCH 78790 to Colleen Mary Whittaker (Respondent). The Pharmacy Technician License was in
22 full force and effect at all times relevant to the charges brought herein and will expire on
23 October 31, 2011, unless renewed.

24 **JURISDICTION**

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

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

9 6. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
10 revoked.”

11 7. Section 4301 states, in pertinent part:

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

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

15 ...

16 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
17 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
18 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
19 to the extent that the use impairs the ability of the person to conduct with safety to the public the
20 practice authorized by the license.

21

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

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. . . .”

27 ///

28 ///

1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

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

16 10. Respondent is subject to disciplinary action under sections 490, 4300, 4301,
17 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the
18 grounds of unprofessional conduct, in that on or about August 26, 2009, Respondent was
19 convicted of a crime substantially related to the qualifications, functions or duties of a registered
20 pharmacy technician which to a substantial degree evidence her present or potential unfitness to
21 perform the functions authorized by her license in a manner consistent with the public health,
22 safety, or welfare, as follows:

23 a. On or about April 26, 2009, after pleading nolo contendere and admitting to two (2)
24 prior convictions for the same violation, Respondent was convicted of one (1) misdemeanor count
25 of violating Vehicle Code section 23152(b) [drive while having an equal to or greater than 0.08%
26 blood alcohol, to wit, 0.21% BAC] in the criminal proceeding entitled *The People of the State of*
27 *California v. Colleen Mary Whittaker* (Super. Ct. San Luis Obispo County, 2009, No.
28 M000435556). The Court sentenced Respondent to 180 days in jail, placed her on four (4) years

1 probation, ordered her to complete a 2nd Offender DWI Program, and ordered the Department of
2 Motor Vehicles to revoke her driving privilege.

3 b. The circumstances underlying the conviction are that on or about June 14, 2009,
4 Respondent was driving a vehicle while admittedly under the influence of alcohol.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Alcohol Related Conviction)**

7 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
8 subdivision (k), on the grounds of unprofessional conduct, in that on or about April 26, 2009,
9 Respondent sustained a conviction involving the use, consumption, or self-administration of
10 alcoholic beverages. Complainant refers to and by this reference incorporates the allegations set
11 forth above in paragraph 10, subparagraphs a and b, inclusive, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
15 subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to
16 herself and / or used alcoholic beverages to the extent or in a manner as to be dangerous or
17 injurious to herself or others. Complainant refers to and by this reference incorporates the
18 allegations set forth above in paragraphs 10 and 11, inclusive, as though set forth fully.

19 **DISCIPLINE CONSIDERATIONS**

20 13. To determine the degree of discipline, Complainant alleges that:

21 a. On or about June 14, 2004, after pleading nolo contendere and admitting to two (2)
22 prior convictions for the same violation, Respondent was convicted of one (1) misdemeanor count
23 of violating Vehicle Code section 23152(b) [drive while having an equal to or greater than 0.08%
24 blood alcohol, to wit, 0.17% BAC] in the criminal proceeding entitled *The People of the State of*
25 *California v. Colleen Mary Whittaker* (Super. Ct. San Luis Obispo County, 2009, No.
26 M000356533). The Court sentenced Respondent to 14 days in jail, placed her on three (3) years
27 probation, and ordered her to complete a 2nd Offender DWI Program. The violation occurred on
28 or about April 17, 2004.

