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

In the Matter of the Accusation Against:

Case No. 4366

TAMMY SMITH

1320 Cashew Road Santa Rosa, CA 95403

Pharmacy Technician Registration No. TCH 12242

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 May 8, 2013.

It is so ORDERED on April 8, 2013.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

STANLEY C. WEISSER Board President

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1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Supervising Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant  BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against:	Case No. 4366	
12	TAMMY M. SMITH 1320 Cashew Road Santa Rosa, CA 95403	STIPULATED SURRENDER OF LICENSE AND ORDER	
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14	Pharmacy Technician License No. TCH 12242		
15	Respondent.		
16	In the interest of a prompt and speedy resolution of this matter, consistent with the public		
17	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs		
18	the parties hereby agree to the following Stipulated Surrender of License and Order which will be		
19	submitted to the Board for approval and adoption as the final disposition of the Accusation.		
20	<u>PARTIES</u>		
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.		
22	She brought this action solely in her official capacity and is represented in this matter by Kamala		
23	D. Harris, Attorney General of the State of California, by Joshua A. Room, Supervising Deputy		
24	Attorney General.		
25	1. Respondent Tammy M. Smith (Respo	ndent) is representing herself in this proceeding	
26	and has chosen not to exercise her right to be represented by counsel.		
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2. On or about March 18, 1994, the Board of Pharmacy issued Pharmacy Technician License Number TCH 12242 to Tammy M. Smith (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4366 and will expire on March 31, 2014, unless renewed.

## JURISDICTION

- 3. Accusation No. 4366 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 January 14, 2013. Respondent timely filed her Notice of Defense contesting the Accusation.
- 4. A copy of Accusation No. 4366 is attached as exhibit A and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands, the charges and allegations in Accusation No. 4366. Respondent has also carefully read, and understands the effects of, this Stipulated Settlement and Disciplinary Order.
- 6. Respondent is fully aware of her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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**

2. Respondent admits the truth of each and every charge and allegation in Accusation No. 4366, agrees that cause exists for disciplined and hereby surrenders her Pharmacy Technician License No. TCH 12242 for the Board's formal acceptance.

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

## RESERVATION

4. 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**

- 5. 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. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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.
- 6. The parties understand and agree that facsimile copies of this stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 7. 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.
- 8. 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:

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#### ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 12242, issued to Respondent Tammy M. Smith, 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 her pocket license and, if one was issued, her 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 Respondent 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. 4366 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 \$2,177.50 prior to issuance of a new or reinstated license.
- 7. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 4366 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure

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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: 2-20-13

TAMMY M. 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: 3/1/2013

Respectfully submitted,

KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General

JOSHUA A. ROOM

Supervising Deputy Attorney General Attorneys for Complainant

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Exhibit A

Accusation No. 4366

- H	· ·		
1	KAMALA D. HARRIS		
2	Attorney General of California FRANK H. PACOE		
3	Supervising Deputy Attorney General JOSHUA A. ROOM		
4	Deputy Attorney General State Bar No. 214663		
H	455 Golden Gate Avenue, Suite 11000		
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1299		
6	Facsimile: (415) 703-5480  Attorneys for Complainant		
7	BEFORE TI	TR:	
8	BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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$_{11}\parallel$	In the Matter of the Accusation Against: Ca	se No. 4366	
12	TAMMY M. SMITH		
13	1320 Cashew Road Santa Rosa, CA 95403	CCUSATION	
14	Pharmacy Technician License No. TCH 12242	•	
15	Respondent.		
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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, 1994, the Board of Pharmacy issued Pharmacy Technician		
22	License Number TCH 12242 to Tammy M. Smith (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 March 31, 2014, 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.		
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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

## STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (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.
- (I) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.
- 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

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

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

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

# FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 11. Respondent is subject to discipline under section 4301(I) 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 August 29, 2011, in the criminal case *People v. Tammy Mae Smith*, Case No. SCR-604740 in Sonoma County Superior Court, Respondent was convicted of violating (1) Vehicle Code section 23152(a) (Driving under the influence of alcohol or drugs), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more, and (2) Vehicle Code section 23152(b) (Driving with blood alcohol level of 0.08% or more), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more, as follows:
- a. On or about June 28, 2011, the California Highway Patrol received a citizen's report of a vehicle driving erratically and with a driver believed to be under the influence. The officer(s) responded and discovered Respondent driving erratically. After stopping the vehicle, the officer(s) detected the odor of alcohol, Respondent's eyes were red and watery, and she had slurred speech and an unsteady gait. When asked if she had been drinking, Respondent answered "two shots." Respondent was unable to successfully perform Field Sobriety Tests (FSTs), and she was placed under arrest. Breath tests registered blood alcohol levels of 0.21% and 0.23%.

- b. On or about July 11, 2011, Respondent was charged by Complaint in Case No. SCR-604740 with violating (1) Vehicle Code section 23152(a) (Driving under the influence of alcohol or drugs), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more, and (2) Vehicle Code section 23152(b) (Driving with blood alcohol level of 0.08% or more), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more;
- c. On or about August 29, 2011, Respondent pleaded nolo contendere and was convicted of both counts and both special allegations. Imposition of sentence was suspended in favor of a conditional sentence of thirty-six (36) months, on terms and conditions including four (4) days in jail (1 day CTS), sixty (60) days with an alcohol-detecting (SCRAM) ankle bracelet, a First Offender Drinking Driver Program, an alcohol prohibition, and fines and fees..

# SECOND CAUSE FOR DISCIPLINE

(Dangerous or Injurious Use of Alcohol)

12. Respondent is subject to discipline under section 4301(h) of the Code, in that, as described in paragraph 11 above, Respondent made dangerous or injurious use of alcohol.

# THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent is subject to discipline under section 4301 of the Code in that, as described in paragraphs 11 and 12 above, Respondent engaged in unprofessional conduct.

## DISCIPLINE CONSIDERATIONS

14. To determine the appropriate level of discipline, if any, to be imposed on Respondent, Complainant further alleges that on or about July 19, 2008, Respondent was in a car being driven by her sister, who was under the influence of alcohol, and when the car was stopped by police and her sister was placed under arrest; Respondent showed signs of significant intoxication, including belligerence toward police. Respondent was arrested and subsequently charged with violating Penal Code section 647(f) (Public Intoxication - Unable to Care for Self). After she completed and submitted proof of completion of thirty (30) AA meetings, the case was dismissed.

15. To determine the appropriate level of discipline, if any, to be imposed on Respondent, Complainant further alleges that on or about September 1, 2010, Respondent was involved in an incident wherein she was in a car in the drive-through lane of a fast-food establishment, and her car bumped the car in front of her in the lane. When the other driver said she was going to call the police, Respondent fled the scene, in violation of Vehicle Code section 20002 (Hit and Run).

#### PRAYER

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

- 1. Revoking or suspending Pharmacy Technician License Number TCH 12242, issued to Tammy M. Smith (Respondent);
- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
  - 3. Taking such other and further action as is deemed necessary and proper.

DATED: 1/7/13 VIRGINIA HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California
Complainant

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