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

In the Matter of the Accusation Against:

Case No. 4482

RENEE MICHELLE FOWLSTON

141 Woodbury Circle, Unit D Vacaville, CA 95687

Pharmacy Technician Registration No. TCH 6493

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 4, 2013.

It is so ORDERED on September 4, 2013.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STANLEY C. WEISSER Board President

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1	KAMALA D. HARRIS Attorney General of California	
2	FRANK H. PACOE Supervising Deputy Attorney General	
3	JOSHUA A. ROOM Supervising Deputy Attorney General	
4	State Bar No. 214663 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	BEFORI	THE
8	BOARD OF P DEPARTMENT OF CO	HARMACY
9	STATE OF CA	
10	In the Matter of the Accusation Against:	Case No. 4482
11	RENEE MICHELLE FOWLSTON	OAH No. 2013050226
12	141 Woodbury Circle, Unit D Vacaville, CA 95687	STIPULATED SURRENDER OF
13	Pharmacy Technician License No. TCH 6493	LICENSE AND ORDER
14	Respondent.	
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16		ition of this matter, consistent with the public
17	interest and the responsibility of the Board of Pha	
18	the parties hereby agree to the following Stipulate	
19	submitted to the Board for approval and adoption	as the final disposition of the Accusation.
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21	PAR	
22		utive Officer, Board of Pharmacy, brought this
23	action solely in her official capacity and is represe	v , , , , , , , , , , , , , , , , , , ,
24	General of the State of California, by Joshua A. R	
25		nt) is represented in this proceeding by attorney
26	Robert E. Thurbon, whose address is Thurbon &	•
27	210, Gold River, CA 95670 (telephone (916) 636	-1840).
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3. On or about April 7, 1993, the Board of Pharmacy issued Pharmacy Technician
 License No. TCH 6493 to Renee Michelle Fowlston (Respondent). The Pharmacy Technician
 License was in full force and effect at all times relevant to the charges brought in Accusation No.
 4482 and will expire on March 31, 2013, unless renewed.

JURISDICTION

4. Accusation No. 4482 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 February 28, 2013.
Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 4482 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, discussed with counsel, and understands the charges
15 and allegations in Accusation No. 4482. Respondent also has carefully read, discussed with
16 counsel, and understands the effects of this Stipulated Surrender of License and 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.

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CULPABILITY 1 8. Respondent admits the truth of each and every charge and allegation in Accusation 2 No. 4482, agrees that cause exists for discipline, and hereby surrenders her Pharmacy Technician 3 Registration No. TCH 6493 for the Board's formal acceptance. 4 9. Respondent understands that by signing this stipulation she enables the Board to issue 5 an order accepting the surrender of her Pharmacy Technician License without further process. 6 7 RESERVATION 8 Admissions made by Respondent herein are only for the purposes of this proceeding, 10. 9 or any other proceedings in which the Board of Pharmacy or other professional licensing agency 10 is involved, and shall not be admissible in any other criminal or civil proceeding. 11 12 CONTINGENCY 13 This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 11. 14 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may 15 communicate directly with the Board regarding this stipulation and surrender, without notice to or 16 participation by Respondent or her counsel. By signing the stipulation, Respondent understands 17 and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the 18 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its 19 Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or 20effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, 21 and the Board shall not be disqualified from further action by having considered this matter. 22 12. The parties understand and agree that facsimile copies of this stipulation, including 23 facsimile signatures thereto, shall have the same force and effect as the originals. 24 This Stipulated Surrender of License and Order is intended by the parties to be an 13. 25 integrated writing representing the complete, final, and exclusive embodiment of their agreement. 26It supersedes any and all prior or contemporaneous agreements, understandings, discussions, 27 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order 28 3

Stipulated Surrender of License (Case No. 4482)

may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. 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:

<u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 6493, issued to
Respondent Renee Michelle Fowlston, 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.

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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.

If she 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, including, but not limited to, certification by a nationally recognized body prior
 to the issuance of a new license. All of the charges and allegations contained in Accusation No.
 4482 shall be deemed to be true, correct and admitted by Respondent when the Board determines
 whether to grant or deny the application or petition.

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6. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$4,583.00 prior to issuance of a new or reinstated license.

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1	7. If Respondent should ever apply or reapply for a new license or certification, or
2	petition for reinstatement of a license, by any other health care licensing agency in the State of
3	California, all of the charges and allegations contained in Accusation, No. 4482 shall be deemed
4	to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
5	other proceeding seeking to deny or restrict licensure.
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7	ACCEPTANCE
8	I have carefully read the above Stipulated Surrender of License and Order and have fully
9	discussed it with my attorney, Robert E. Thurbon. I understand the stipulation and the effect it
. 10	will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License
11	and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
12	Order of the Board of Pharmacy.
13	
14	DATED: 6-17-15
15	Respondent
16	I have read and fully discussed with Respondent Renee Michelle Fowlston the terms and
17	conditions and other matters contained in this Stipulated Surrender of License and Order. I
18	approve its form and content.
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20	RÓBERT E. THÙRBON Attorney for Respondent
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	Stipulated Surrender of License (Case No, 4482)

1	ENDORSEMENT
2	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
3	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.
4	Dated: 7/2/2013 Respectfully submitted,
5	KAMALA D. HARRIS
6	Attorney General of California FRANK H. PACOE
7	Supervising Deputy Attorney General
8	JALL
9	JOSHUA A. ROOM Supervising Deputy Attorney General
10	Supervising Deputy Attorney General Attorneys for Complainant
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Exhibit A

Accusation No. 4482

1 2 3 4 5 6 7	KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM 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
8 9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	In the Matter of the Accusation Against: Case No. 4482
11	RENEE MICHELLE FOWLSTON
12	141 Woodbury Circle, Unit DVacaville, CA 95687A C C U S A T I O N
13	Pharmacy Technician License No. TCH 6493
14 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 April 7, 1993, the Board of Pharmacy issued Pharmacy Technician
22	License No. TCH 6493 to Renee Michelle Fowlston (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, 2013, 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 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

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STATUTORY AND REGULATORY PROVISIONS

12 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
13 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
14 not be 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.
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(j) The violation of any of the statutes of this state, of 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.
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8. California Code of Regulations, title 16, section 1770, states: 1 "For the purpose of denial, suspension, or revocation of a personal or facility license 2 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a 3 crime or act shall be considered substantially related to the qualifications, functions or duties of a 4 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a 5 licensee or registrant to perform the functions authorized by her license or registration in a 6 manner consistent with the public health, safety, or welfare." 7 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous 8 drug or dangerous device except upon the prescription of an authorized prescriber. 9 Section 4060 of the Code provides, in pertinent part, that no person shall possess any 10. 10 controlled substance, except that furnished upon a valid prescription/drug order. 11 11. Health and Safety Code section 11170 provides that no person shall prescribe, 12 administer, or furnish a controlled substance for himself or herself. 13 Health and Safety Code section 11173, subdivision (a), provides that no person shall 12. 14 obtain or attempt to obtain controlled substances, or procure or attempt to procure the 15 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, 16 or subterfuge; or (2) by the concealment of a material fact. 17 Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess 13. 18 any controlled substance listed in Schedule II (Health and Safety Code section 11055), 19 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription. 20 14. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess 21 any controlled substance listed in Schedule II (Health and Safety Code section 11055), 22 subdivision (d), or any non-narcotic drug in Schedules III-V, absent a valid prescription. 23 COST RECOVERY 24 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the 25 administrative law judge to direct a licentiate found to have committed a violation of the licensing 26 act to pay a sum not to exceed its reasonable costs of investigation and enforcement. 27 111 28 3

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.	
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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. Adipex-P is a brand name for phentermine, a Schedule IV controlled substance as	
14	designated by Health and Safety Code section 11057(f)(4) and a dangerous drug as designated by	
15	Business and Professions Code section 4022. It is a stimulant/weight loss drug.	
16	19. Bontril is a brand name for phendimetrazine, a Schedule IV controlled substance as	
17	designated by Health and Safety Code section 11057(f) and a dangerous drug as designated by	
18	Business and Professions Code section 4022. It is a stimulant/weight loss drug.	
19	20. Ativan is a brand name for lorazepam, a Schedule IV controlled substance as	
20	designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as designated	
21	by Business and Professions Code section 4022. It is a depressant drug.	
22	FACTUAL BACKGROUND	
23	21. From an unknown start date until on or about May 8, 2012, Respondent worked as a	
24	pharmacy technician at a Walgreens Pharmacy (PHY 39368) in Vacaville, CA, where by virtue of	
25	her employment she had access to controlled substances and dangerous drugs. During the tenure	
26	of her employment, Respondent used her access to divert/steal controlled substances / dangerous	
27	drugs, including Adipex-P/phentermine, Bontril/phendimetrazine, and/or Ativan/lorazepam.	
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22. The exact number of instances of diversion/theft by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of investigations by Walgreens and by the Board, the following was discovered:

- a. In or about December 2011, Walgreens Pharmacy staff noticed a discrepancy
 between on-hand counts of phentermine and what was expected based on pharmacy records. In
 or about January 2012, actual counts of generic and brand phentermine tablets were off again.
 Various security measures were implemented to better monitor the phentermine supplies. Based
 on monitoring of continued losses, it was determined that Respondent was one of two employees
 handling the affected drug stock(s) during the date range(s) on which discrepancies appeared.
- b. On or about May 4, 2012, video surveillance revealed Respondent taking brand
 or generic **phentermine** tablets from the stock container(s) in the pharmacy.
- c. On or about May 8, 2012, Respondent was interviewed by Walgreens staff, and 12 she confessed to taking and self-administering phentermine, phendimetrazine, and lorazepam. 13 At least some of the diverted drugs were consumed while Respondent was on duty. Though she 14 could not be specific about the total quantities taken or consumed, Respondent admitted to taking 15 at least ninety (90) tablets of **phentermine** over the prior 6-8 months, at least twenty (20) tablets 16 of **phendimetrazine** over the prior 2 months, and at least six (6) tablets of **lorazepam** over the 17 prior 3 months. On or about July 12, 2012, in an interview with Board Inspector(s), Respondent 18 confirmed the theft and self-use of phentermine, phendimetrazine, and lorazepam. She said 19 that she had diverted phentermine from Walgreens for self-use for about a year. She admitted to 20 never having any valid prescriptions for any of the medications diverted. She also admitted that 21 she had previously been a heavy drinker of alcohol, though she had quit drinking. 22
- d. On or about July 6, 2012, Walgreens submitted a revised Report of Theft or
 Loss of Controlled Substances (Form DEA-106) to the Drug Enforcement Administration (DEA)
 and to the Board, in which Walgreens reported the following losses to employee pilferage: 152
 tablets of phentermine 15mg, 56 tablets of phentermine 30mg, 872 tablets of phentermine
 37.5mg, 12 tablets of phendimetrazine 105mg, and 43 tablets of lorazepam 0.5mg.
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	EDGT CALLER FOR DISCIPLINE	
	FIRST CAUSE FOR DISCIPLINE	
2	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption) 23. Respondent is subject to discipline under section 4301(f) of the Code, in that	
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4	Respondent, as described in paragraphs 21 and 22 above, committed numerous acts involving	
5	moral turpitude, dishonesty, fraud, deceit, or corruption.	
6	SECOND CAUSE FOR DISCIPLINE	
7	(Self-Administration of Controlled Substance)	
8	24. Respondent is subject to discipline under section 4301(h) of the Code, in that	
9	Respondent, as described in paragraphs 21 and 22 above, administered one or more controlled	
10	substances to herself, including phentermine, phendimetrazine, and lorazepam products.	
11	THIRD CAUSE FOR DISCIPLINE	
12	(Furnishing of Controlled Substance(s))	
13	25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section	
14	4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described	
15	in paragraphs 21 and 22 above, furnished to herself or another, and/or conspired to furnish, and/or	
16	assisted or abetted furnishing of, a controlled substance/dangerous drug, without a prescription.	
17	FOURTH CAUSE FOR DISCIPLINE	
18	(Possession of Controlled Substance(s))	
19	26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section	
20	4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that	
21	Respondent, as described in paragraphs 21 and 22 above, possessed, conspired to possess, and/or	
22	assisted in or abetted possession of, one or more controlled substance(s), without a prescription.	
23	FIFTH CAUSE FOR DISCIPLINE	
24	(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)	
25	27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,	
26	and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs	
27	21 and 22 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a	
28	controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.	
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1	SIXTH CAUSE FOR DISCIPLINE	
2	(Unprofessional Conduct)	
3	28. Respondent is subject to discipline under section 4301 of the Code in that	
4	Respondent, as described in paragraphs 21 to 27 above, engaged in unprofessional conduct.	
5	PRAYER	
6	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
7	and that following the hearing, the Board of Pharmacy issue a decision:	
8	1. Revoking or suspending Pharmacy Technician License No. TCH 6493, issued to	
9	Renee Michelle Fowlston (Respondent);	
10	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and	
11	enforcement of this case, pursuant to Business and Professions Code section 125.3;	
12	3. Taking such other and further action as is deemed necessary and proper.	
13	Dim 2/12/13 ()iiii Mardal	
14	DATED: 21215 Ugine Herold VIRGINIA HEROLD	
15	Executive Officer Board of Pharmacy	
16	Department of Consumer Affairs State of California	
17	Complainant	
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