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

In the Matter of the Accusation Against:

Case No. 4684

BRANDON DEVLIN 2492 Gibson Avenue Clovis, CA 93611

Pharmacy Technician Registration No. TCH 91611

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 28, 2013.

It is so ORDERED on October 23, 2013.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STAN C. WEISSER Board President

1	Kamala D. Harris
2	Attorney General of California JANICE K. LACHMAN
3	Supervising Deputy Attorney General
	KRISTINA T. JANSEN Deputy Attorney General
4	State Bar No. 258229 1300 I Street, Suite 125
5	P.O. Box 944255
6	Sacramento, CA 94244-2550 Telephone: (916) 324-5403
7	Facsimile: (916) 327-8643 Attorneys for Complainant
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	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	STATE OF CALIFORNIA
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12	In the Matter of the Accusation Against: Case No. 4684
13	BRANDON DEVLIN OAH No. 4684
14	2492 Gibson Avenue Clovis, CA 93611STIPULATED SURRENDER OF
15	Pharmacy Technician Registration No. TCH
16	91611
• 17	Respondent.
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20	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
21	proceeding that the following matters are true:
22	PARTIES
23	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24	She brought this action solely in her official capacity and is represented in this matter by Kamala
25	D. Harris, Attorney General of the State of California, by Kristina T. Jansen, Deputy Attorney
26	General.
27	2. Brandon Devlin (Respondent) is representing himself in this proceeding and has
28	chosen not to exercise his right to be represented by counsel.
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3. On or about June 5, 2009, the Board of Pharmacy issued Pharmacy Technician 1 Registration No. TCH 91611 to Brandon Devlin (Respondent). The Pharmacy Technician 2 Registration was in full force and effect at all times relevant to the charges brought in Accusation 3 No. 4684 and expired on June 30, 2011. 4 5 JURISDICTION Accusation No. 4684 was filed before the Board of Pharmacy (Board), Department of 4. 6 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other 7 statutorily required documents were properly served on Respondent on July 26, 2013. 8 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation 9 No. 4684 is attached as Exhibit A and incorporated by reference. 10 11 **ADVISEMENT AND WAIVERS** 5. Respondent has carefully read, and understands the charges and allegations in 12 Accusation No. 4684. Respondent also has carefully read, and understands the effects of this 13 Stipulated Surrender of License and 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 Respondent voluntarily, knowingly, and intelligently waives and gives up each and 7. 22 every right set forth above. 23 24 **CULPABILITY** 8. Respondent admits the truth of each and every charge and allegation in Accusation 25 No. 4684, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician 26 Registration No. TCH 91611 for the Board's formal acceptance. 27 28 ///

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Stipulated Surrender of License (Case No. 4684)

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

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 4 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may 5 communicate directly with the Board regarding this stipulation and surrender, without notice to or 6 7 participation by Respondent. 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 8 9 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 10 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not 11 be disqualified from further action by having considered this matter. 12

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11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

16 12. 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.
18 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.

13. 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 Registration No. TCH 91611, issued
 to Respondent Brandon Devlin, is surrendered and accepted by the Board of Pharmacy.

The surrender of Respondent's Pharmacy Technician Registration and the acceptance
 of the surrendered license by the Board shall constitute the imposition of discipline against

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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. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent 8 must comply with all the laws, regulations and procedures for licensure in effect at the time the 9 application or petition is filed, and all of the charges and allegations contained in Accusation No. 10 4684 shall be deemed to be true, correct and admitted by Respondent when the Board determines 11 whether to grant or deny the petition. 12

Respondent may not apply for or reapply for, or petition for reinstatement of, any license, 13 permit, or registration from the Board for three (3) years from the effective date of this Decision 14 and Order. 15

Respondent shall pay the Board its costs of investigation and enforcement in the amount of 16 \$1,220.00 prior to issuance of a new or reinstated license. 17

5. If Respondent should ever apply or reapply for a new license or certification, or 18 petition for reinstatement of a license, by any other health care licensing agency in the State of 19 California, all of the charges and allegations contained in Accusation, No. 4684 shall be deemed 20 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any 21 other proceeding seeking to deny or restrict licensure. 22

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1	ACCEPTANCE
2	I have carefully read the Stipulated Surrender of License and Order. I understand the
3	stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this
4	Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
5	be bound by the Decision and Order of the Board of Pharmacy.
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7	DATED: 8-22-2013
8	BRANDON DEVLIN Respondent
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12	ENDORSEMENT
13	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
. 14	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.
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16	Dated: Respectfully submitted,
17	KAMALA D. HARRIS
18	Attorney General of California JANICE K. LACHMAN
19	Supervising Deputy Attorney General
20	System Eller
21	KRISTINA T. JANSEN Deputy Attorney General
22	Attorneys for Complainant
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Stipulated Surrender of License (Case No. 4684)

Exhibit A

Accusation No. 4684

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1 2 3 4 5 6 7 8 9 10	KAMALA D. HARRIS Attorney General of California JANICE K. LACHMAN Supervising Deputy Attorney General KRISTINA T. JANSEN Deputy Attorney General State Bar No. 258229 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 324-5403 Facsimile: (916) 327-8643 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 4684
12	BRANDON DEVLIN 2492 Gibson Avenue
13	Clovis, California 93611 A C C U S A T I O N
14	Pharmacy Technician Registration No. TCH 91611
15	Respondent.
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17 18	Complainant allegos:
18	Complainant alleges:
20	PARTIES
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22	2. On or about June 5, 2009, the Board of Pharmacy issued Pharmacy Technician
23	Registration Number TCH 91611 to Brandon Devlin (Respondent). The Pharmacy Technician
24	registration expired on June 30, 2011 and has not yet been 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 unless otherwise indicated.
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	Accusation

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Accusation

4. Section 4300.1 of the Code states in pertinent part that the expiration of a boardissued license shall not deprive the board of jurisdiction to commence or proceed with any action or disciplinary proceeding against the licensee.

5. Section 4301 of the Code states in pertinent part that the board shall take action
against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct
shall include, but is not 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.

(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.

(1) The conviction of a crime subsstantially related to the qualifications, functions, and
duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
(commencing with Section 801) of Title 21 of the United States Code regulating controlled
substances or of a violation of the statutes of this state regulating controlled substances or
dangerous drugs shall be conclusive evidence of unprofessional conduct.

California Health and Safety Code section 11550(a) provides in pertinent part that no
 person shall use, or be under the influence of any controlled substance which is...specified in
 paragraph (1) or (2) of subdivision (d)... of Health and Safety Code section 11055. Paragraph (2)
 of subdivision (d) of Health and Safety Code section 11055 states "Methamphetamine, its salts,
 isomers, and salts of its isomers."

California Penal Code section 25850(a) states: "A person is guilty of carrying a
loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any
public place or in any public street in an incorporated city..."

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COST RECOVERY
8. 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 or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
included in a stipulated settlement.
FIRST CAUSE FOR DISCIPLINE
(Unlawful Self-Administration of Controlled Substance)
9. Respondent is subject to disciplinary action under section 4301, subdivision (h),
unprofessional conduct by administering a controlled substance to himself in a manner as to be
dangerous or injurious to himself and without lawful authority therefor. The circumstances are
that on or about April 4, 2012, at approximately 11:45 p.m. Respondent was observed by Officer
Jason Smoak of the Clovis Police Department walking on a sidewalk wearing a sleeveless shirt
despite the temperature at that time being approximately 50 degrees. Upon speaking with
Respondent, Officer Smoak observed that Respondent spoke rapidly, his fingers were twitching
uncontrollably, and his pupils were dialted. In Officer Smoak's training and experienced, he
recognized these signs as possible use of a controlled substance. Officer Smoak asked
Respondent if he would participate in preliminary tests to ascertain whether Respondent was
impaired. Respondent agreed. Officer Smoak checked Respondent's pupils and took
Respondents pulse several times, which was 128, 130, and 132 beats per minute. At that time
Respondent was arrested for being under the influence of methamphetamine. Respondent then
admitted to Officer Smoak that he had smoked crystal meth that day. Respondent stated that he
was addicted to heroin and trying to quit, and a friend had told him that smoking meth would help
him get off heroin. A blood test was done and Respondent tested positive for methamphetamine.
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1 SECOND CAUSE FOR DISCIPLINE (Violation of Statute Regulating Controlled Substances) 2 10. Respondent is subject to disciplinary action under section 4301, subsection (j) 3 4 violation of California Health and Safety Code section 11550(a), being under the influence of a 5 controlled substance, to wit, methamphetamine as set forth in paragraph 10, above. 6 THIRD CAUSE FOR DISCIPLINE (Substantially Related Criminal Conviction) 7 11. Respondent is subject to disciplinary action under section 4301, subsection (1) of the 8 Code in that on or about December 4, 2012, in Fresno County Superior Court, Case Number 9 M12000946 Respondent pled guilty to Penal Code section 25850(a), a misdemeanor¹, a crime 10 substantially related to the qualifications, functions and duties of being a pharmacy technician. 11 The circumstances of the crime are that on or about November 4, 2011, Officer Ryan Wade 12 observed Respondent driving a vehicle with two passengers. Respondent flicked ash from his 13 cigarette out of his window. Officer Wade therefore performed a traffic stop on the vehicle. 14 Officer Wade asked if anyone in the vehicle was on probation or parole. One of the passengers 15 was on parole for illegal transportation of narcotics, and therefore his person and the vehicle were 16 subject to search and seizure. Based on this information, Officer Wade decided to search the 17 vehicle. Respondent then informed Officer Wade that there was a loaded handgun in the trunk of 18 the vehicle. Officer Wade found the handgun, a black and silver Ruger P95 with 7 rounds in the 19 magazine. The magazine was inserted into the handgun and the handgun was wrapped in a blue 20 21 shirt, and concealed in the trunk by the spare tire. Respondent admitted to Officer Wade that he knew it was illegal to carry a loaded weapon in his vehicle. 22 23 PRAYER WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 24 and that following the hearing, the Board of Pharmacy issue a decision: 25 /// 26 27 ¹ Pursuant to Fresno County Superior Court docket records, in exchange for Respondent pleading guilty in this case, the other case (described in paragraph 10 above) was dismissed. 28 Accusation

Revoking or suspending Pharmacy Technician Registration Number TCH 91611, 1. ຸ1 issued to Brandon Devlin 2 2. Ordering Brandon Devlin to pay the Board of Pharmacy the reasonable costs of the 3 investigation and enforcement of this case, pursuant to Business and Professions Code section 4 125.3; 5 3. Taking such other and further action as deemed necessary and proper. 6 7 8 19/13 9 DATED: VIRGINIA HERO LD 10 Executive Officer Board of Pharmacy 11 Department of Consumer Affairs State of California 12 Complainant 13 SA2013111227 11096427.doc 14 15 16 17 18

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Accusation