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

In the Matter of the First Amended Accusation Against:

Case No. 5934

GRANT GUNTHER MILLER 10248 Camino Ruiz #181 San Diego, CA 92126

Pharmacy Technician Registration No. TCH 129435

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 at 5:00 p.m. on March 2, 2017.

It is so ORDERED on January 31, 2017.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

1	KAMALA D. HARRIS		
2	Attorney General of California JAMES M. LEDAKIS		
3	Supervising Deputy Attorney General LORETTA A. WEST		
4	Deputy Attorney General State Bar No. 149294 600 West Broadway, Suite 1800 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266		
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7	Telephone: (619) 738-9425 Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against: Case No. 5934		
13	GRANT GUNTHER MILLER		
14	10248 Camino Ruiz #181 San Diego, CA 92126 STIPULATED SURRENDER OF		
15	Pharmacy Technician Registration LICENSE AND ORDER		
16	No. TCH 129435		
17	Respondent.		
18	In the interest of a prompt and speedy settlement of this matter, consistent with the public		
19	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,		
20	the parties hereby agree to the following Stipulated Surrender and Disciplinary Order which will		
21	be submitted to the Board for approval and adoption as the final disposition of the Accusation.		
22	PARTIES		
23	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy		
24	(Board). She brought this action solely in her official capacity and is represented in this matter b		
25	Kamala D. Harris, Attorney General of the State of California, by Loretta A. West, Deputy		
26	Attorney General.		
27	2. Respondent Grant Gunther Miller is representing himself in this proceeding and has		
28	chosen not to exercise his right to be represented by counsel.		

3. On or about January 7, 2013, the Board issued Pharmacy Technician Registration No. TCH 129435 to Grant Gunther Miller (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5934 and will expire on September 30, 2018, unless renewed.

# **JURISDICTION**

4. On August 29, 2016, Accusation No. 5934 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 6, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5934 is attached as Exhibit A and incorporated by reference.

# ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in Accusation No. 5934. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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**

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 5934, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH 129435 for the Board's formal acceptance.

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. Respondent understands and agrees that counsel for Complainant and the staff of the Board 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 he may not withdraw his 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.
- 11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.
- 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. 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:

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# ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 129435 issued to Respondent Grant Gunther Miller is surrendered and accepted by the Board of Pharmacy.

- 1. Respondent surrenders Pharmacy Technician Registration No. TCH 129435 as of the effective date of this decision. Respondent shall relinquish his pharmacy technician license to the board within ten (10) days of the effective date of this decision.
- 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 Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.
- 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.
- 4. Respondent understands and agrees that if he 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.
- 5. Respondent may not apply for any license, permit, or registration from the Board for three (3) years from the effective date of this decision. Respondent stipulates that should be apply for any license from the Board on or after the effective date of this decision, all allegations set forth in the Accusation shall be deemed to be true, correct and admitted by respondent when the Board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board, including, but not limited to certification by a nationally recognized body prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.
- 6. Respondent stipulates that should be apply for any license from the Board on or after the effective date of this decision, investigation and prosecution costs in the amount of \$1,292.00 shall be paid to the Board prior to issuance of the license.

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. 5934 shall be deemed to		
4	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.		
6	ACCEPTANCE		
7	I have carefully read the Stipulated Surrender of License and Order. I understand the		
8	stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this		
9	Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to		
10	be bound by the Decision and Order of the Board of Pharmacy.		
11			
12	DATED: 12/14 6 WC		
13	GRANT GUNTHER MILLER Respondent		
14	**************************************		
15	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.		
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18	Dated: 12/29/16 Respectfully submitted,		
19	Kamala D. Harris		
20	Attorney General of California JAMES M. LEDAKIS		
21	Supervising Deputy Attorney General		
22	Loute A. West		
23	LORETTA A. WEST Deputy Attorney General		
24	Attorneys for Complainant		
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26	priodu (27040)0		
27	SD2016701929 Proposed Stipulatd Surrender to client 12 2 16.docx		
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Exhibit A

Accusation No. 5934

and the second	KAMALA D. HARRIS Attorney General of California				
2	GREGORY J. SALUTE Supervising Deputy Attorney General				
3	DESIREE I. KELLOGG Deputy Attorney General State Bar No. 126461 600 West Broadway, Suite 1800				
4					
5	San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 738-9429 Facsimile: (619) 645-2061 Attorneys for Complainant				
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8	BEFORE THE				
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS				
10	STATE OF CALIFORNIA				
11	In the Matter of the Accusation Against: Case No. 5934				
12	GRANT GUNTHER MILLER				
13	10248 Camino Ruiz #181 San Diego, CA 92126 ACCUSATION				
14	Pharmacy Technician Registration				
15	No. TCH 129435				
16	Respondent.				
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.				
22	2. On or about January 7, 2013, the Board of Pharmacy issued Pharmacy Technician				
23	Registration Number TCH 129435 to Grant Gunther Miller (Respondent). The Pharmacy				
24	Technician Registration was in full force and effect at all times relevant to the charges brought				
25	herein and will expire on September 30, 2016, unless renewed.				
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 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300(a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

# STATUTORY PROVISIONS

6. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not 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.

(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.

7. Health & Safety Code section 11150 states:

No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article I (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article I (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting with the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3

of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

B. Health & Safety Code section 11157 states:

No person shall issue a prescription that is false or fictitious in any respect.

9. Health & Safety Code section 11173(a) states:

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

### COSTS

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 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.

### DRUG

11. <u>Hydrocodone/acetaminophen</u>, also known as Norco is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant to Business and Professions Code section 4022.

### FACTUAL ALLEGATIONS

- 12. At all times relevant herein, Respondent was employed as a pharmacy technician at Scripps Memorial Hospital in Encinitas, California.
- 13. On September 30, 2014 at approximately 6:00 p.m, a male who sounded like Respondent telephoned Rite Aid Pharmacy in Encinitas, California. He identified himself as Brett and an employee of Dr. Christopher H. He proceeded to "call in" a prescription for Norco 5/325mg #10, 1 every 6 hours as needed for pain, in the name of Respondent. The pharmacist stated that she needed to verify the prescription.

14. At approximately 7:00 p.m., Respondent came to the Rite Aid Pharmacy and attempted to cancel his prescription for Norco. It was subsequently confirmed that Dr. Christopher H. had not issued a Norco prescription for Respondent on September 30, 2014. Respondent initially denied that he had called in the fraudulent prescription for Norco when interviewed by his employer but subsequently admitted to it.

# FIRST CAUSE FOR DISCIPLINE

# (Commission of Acts involving Dishonesty, Fraud or Deceit)

15. Respondent has subjected his registration to disciplinary action under section 4301(f) of the Code for committing acts involving dishonesty, fraud and deceit, as described in paragraphs 12 through 14, above, when Respondent impersonated an employee from a physician's office, called in a false prescription for controlled substances and denied his conduct to his former employer.

# SECOND CAUSE FOR DISCIPLINE

# (Violation of Drug Laws)

16. Respondent has subjected his registration to disciplinary action under section 4301(j) of the Code for violations of drug laws, including Health & Safety Code sections 11150, 11157 and 11173(a), as described in paragraphs 12 through 14, above, when Respondent impersonated an employee from a physician's office and called in a false prescription for controlled substances.

### THIRD CAUSE FOR DISCIPLINE

# (Unprofessional Conduct)

17. Respondent has subjected his registration to disciplinary action under section 4301 of the Code for unprofessional conduct in that he engaged in the activities described in paragraphs 12-14 above, which are incorporated herein by reference.

### 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 Registration Number TCH 129435, issued to Grant Gunther Miller:

1	2. Ordering Grant Gunther Miller to pay the Board of Pharmacy the reasonable costs of		
2	the investigation and enforcement of this case, pursuant to Business and Professions Code section		
3	125.3;		
4	3. Taking such other and further action as deemed necessary and proper.		
5.			
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7	8/29/16	Diginia Gud	
8	DATED:	VIRGINIA HEROLD	
9		Executive Officer Board of Pharmacy Department of Consumer Affairs	
11		State of California  Complainant	
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