

ORIGINAL

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6 **Attorneys for Complainant**

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

14 **TERENCE SCOTT CLARK**
7529 Guildwood Street
15 Sacramento, California 95822

16 Pharmacy Technician Registration No. TCH 40302

17 Respondent.

Case No. 2807
OAH Case No. N2006020172

**STIPULATION FOR
SURRENDER,
INVALIDATION AND
REVOCAATION OF
PHARMACY TECHNICIAN
REGISTRATION, DECISION
AND ORDER**

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19
20 IT IS STIPULATED by and between Respondent **TERENCE SCOTT CLARK**,
21 Pharmacy Technician Registration Number TCH 40302, (hereinafter referred to as
22 "Respondent"), and the Board of Pharmacy, Department of Consumer Affairs, State of
23 California, that:

24 1. Respondent is a licensee of the Board of Pharmacy (hereinafter referred to as the
25 "Board") and has been duly served with the Accusation on file and pending in Case No. 2814,
26 and accompanying documents. A copy of the Accusation is attached hereto as Exhibit "1" and
27 is incorporated by reference as though set forth at length herein. Respondent is subject to the
28

1 Technician Registration. Should Respondent ever come before the Board, or any other
2 government agency responsible for the registering or licensing pharmacy technicians,
3 Respondent stipulates that all the charges set forth in the attached Accusation shall be deemed
4 to be admitted as facts without the necessity of further proof.

5 9. **The foregoing admissions are made only for the purpose of this proceeding**
6 **and any subsequent proceedings between Respondent and the Board, the Department of**
7 **Consumer Affairs or the State of California and any of its agencies, and any other**
8 **government agency responsible for licensing pharmacy technicians.** This Stipulation shall
9 not be used or admissible for any purpose in any other civil or criminal proceedings. Further,
10 this Stipulation shall have no force or effect in any other case or proceeding where the Board is
11 not a party thereto. In the event this Stipulation is not adopted by the Board, it shall be null and
12 void, and may not be used by the parties or any other person for any purpose.

13 10. Respondent agrees that the Stipulation constitutes sufficient grounds for the
14 Board's imposition of a penalty against the Pharmacy Technician Registration heretofore issued
15 to Respondent.

16 11. It is understood by Respondent that, in deciding whether to adopt this
17 Stipulation, the Board may receive oral and written communications from the staff of the
18 Department of Consumer Affairs, Board of Pharmacy and the Office of the Attorney General.
19 Communications pursuant to this paragraph shall not disqualify the Board or other persons from
20 future participation in this or any other matter affecting Respondent.

21 12. The Board has incurred investigation and prosecution costs in this matter in the
22 amount of three thousand six hundred dollars and no cents (\$3,600.00). Had this matter gone to
23 a Hearing, the Board, if successful in establishing the allegations set forth in the Accusation,
24 could have recover said costs from Respondent, pursuant to the authority of Business and
25 Professions Code section 125.3. The Board agrees to waive recovery of all investigation and
26 prosecution costs incurred herein, except in eventuality that should Respondent apply for any
27 license issued by the Department of Consumer Affairs, such costs shall be immediately due and
28 owing to the Department of Consumer Affairs.

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ACCEPTANCE OF STIPULATION

I hereby state that I have read and that I understand this document. I understand that I have certain rights under the California Administrative Procedure Act and the laws and regulations of the State of California in regard to this matter, and I knowingly and intelligently waive those rights.

I agree that a signed facsimile (FAX) of this document shall be as binding as an original signed copy. I fully understand all of, and agree to be bound by, the terms of this document.

Dated: 3-26-06

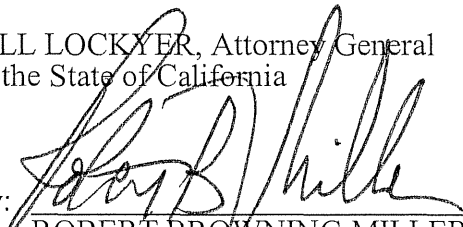

TERENCE SCOTT CLARK

ACKNOWLEDGMENT

The foregoing Stipulation is respectfully submitted to the Board of Pharmacy, Department of Consumer Affairs for consideration.

Dated: MARCH 21, 2006

BILL LOCKYER, Attorney General
of the State of California

By: 
ROBERT BROWNING MILLER
Deputy Attorney General

Attorneys for Complainant

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ORDER

The above Stipulation has been adopted and shall become the Final Decision of the Board of Pharmacy of the Department of Consumer Affairs of the State of California.

This decision shall become effective on June 30, 2006.

It is so ORDERED on May 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

STANLEY W. GOLDENBERG
Board President

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EXHIBIT 1
ACCUSATION IN CASE NO. 2807

ORIGINAL

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12 In the Matter of the Accusation Against:
13 **TERENCE SCOTT CLARK**
7529 Guildwood Street
14 Sacramento, California 95822
15 Pharmacy Technician Registration No. TCH 40302
16 Respondent.

Case No. 2807

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of
22 Consumer Affairs.

23 2. On or about January 2, 2002, the Board issued Pharmacy Technician
24 Registration Number TCH 40302 to Terence Scott Clark ("Respondent"). On September 21,
25 2004, in the criminal proceeding titled *People v. Terence Scott Clark* (Sacramento Sup. Ct.,
26 2004, No. 04-F07484), Respondent surrendered his pharmacy technician registration to the court
27 based upon an order pursuant to Penal Code section 23. Respondent's Pharmacy Technician
28 Registration will expire on July 31, 2006, unless renewed.

1 STATUTORY PROVISIONS

2 3. Business and Professions Code ("Bus. & Prof. Code") section 4202,
3 subdivision (d), states that the Board may suspend or revoke a registration issued pursuant to this
4 section on any ground specified in Section 4301.

5 4. Bus. & Prof. Code section 4300 states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding one
12 year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper . . .

15 5. Bus. & Prof. Code section 4301 states, in pertinent part:

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

19

20 (f) The commission of any act involving moral turpitude, dishonesty,
21 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.

22

23 (j) The violation of any of the statutes of this state or of the United States
regulating controlled substances and dangerous drugs . . .

24 6. Bus. & Prof. Code section 4022 states:

25 "Dangerous drug" or "dangerous device" means any drug or device unsafe
26 for self-use in humans or animals, and includes the following:

27 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

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1 (b) Any device that bears the statement: "Caution: federal law restricts this
2 device to sale by or on the order of a -----," "Rx only," or words of similar
3 import, the blank to be filled in with the designation of the practitioner licensed to
4 use or order use of the device.

5 (c) Any other drug or device that by federal or state law can be lawfully
6 dispensed only on prescription or furnished pursuant to Section 4006.

7 7. Bus. & Prof. Code section 118, subdivision (b), states:

8 The suspension, expiration, or forfeiture by operation of law of a license
9 issued by a board in the department, or its suspension, forfeiture, or cancellation
10 by order of the board or by order of a court of law, or its surrender without the
11 written consent of the board, shall not, during any period in which it may be
12 renewed, restored, reissued, or reinstated, deprive the board of its authority to
13 institute or continue a disciplinary proceeding against the licensee upon any
14 ground provided by law or to enter an order suspending or revoking the license or
15 otherwise taking disciplinary action against the licensee on any such ground.

16 8. Health and Safety Code ("Health & Saf. Code") 11173, subdivision (a),
17 states:

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

22 9. Health & Saf. Code section 11350, subdivision (a), states:

23 Except as otherwise provided in this division, every person who possesses
24 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
25 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
26 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
27 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
28 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
to practice in this state, shall be punished by imprisonment in the state prison.

10. Health & Saf. Code section 11351 states:

Except as otherwise provided in this division, every person who possesses
for sale or purchases for purposes of sale (1) any controlled substance specified in
subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or
(20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of
Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
shall be punished by imprisonment in the state prison for two, three, or four years.

11. Health & Saf. Code section 11357, subdivision (b), states, in pertinent
part, that except as authorized by law, every person who possesses not more than 28.5 grams of

1 marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by
2 a fine of not more than one hundred dollars (\$100).

3 **Cost Recovery**

4 12. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board
5 may request the administrative law judge to direct a licentiate found to have committed a
6 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
7 investigation and enforcement of the case.

8 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE**

9 13. "Vicodin", a combination drug containing hydrocodone 5 mg and APAP,
10 is a Schedule III controlled substance as designated by Health & Saf. Code section 11056,
11 subdivision (e)(4), and is a dangerous drug within the meaning of Bus. & Prof. Code section
12 4022 in that it is available by prescription only.

13 14. "Marijuana" is a Schedule I controlled substance as designated by Health
14 & Safety Code section 11054, subdivision (d)(13).

15 **FACTUAL BACKGROUND**

16 15. From approximately 2003 to August 2004, Respondent was employed as a
17 pharmacy technician at Broadway Long Term Care Pharmacy, Inc. (hereinafter "Broadway
18 Pharmacy"), located in Sacramento, California.

19 16. On or about July 9, 2004, David Carroll, Pharmacist-In-Charge of
20 Broadway Pharmacy, reported to the California Department of Justice (CA DOJ) that one or
21 more of their employees had stolen hydrocodone tablets from within the pharmacy.

22 17. From July 23, 2004, through August 3, 2004, CA DOJ, the California
23 Bureau of Narcotic Enforcement ("BNE"), and the U.S. Drug Enforcement Agency ("DEA")
24 conducted an investigation into the diversion of controlled substances from Broadway Pharmacy.

25 18. On August 3, 2004, representatives from DEA, BNE, and the California
26 Department of Health and Human Services interviewed Respondent. Respondent admitted that
27 he had stolen approximately 300 to 500 tablets of controlled substances, usually Vicodin, out of
28 the pharmacy three to four times per month over a one year period, including 30 Vicodin tablets

1 in May 2004. Respondent also admitted that he assisted another pharmacy technician, Juan
2 Evans ("Evans"), in stealing hydrocodone in exchange for which he received marijuana.
3 Respondent stated that he and Evans worked together to steal Vicodin and that Respondent sold
4 the Vicodin to a female named "Betty" for cash. Respondent consented to a search of his
5 residence and was found in possession of eleven 7.5 tablets of hydrocodone and eleven grams of
6 marijuana. Respondent was subsequently charged with violating Health & Saf. Code sections
7 11351, 11173, subdivision (a), 11350, subdivision (a), and 11357, subdivision (b).

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Violations of State Laws Regulating Controlled Substances)**

10 19. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code
11 section 4301, subdivision (j), on the grounds of unprofessional conduct. On and between May 1,
12 2004, and August 3, 2004, while employed as a pharmacist technician at Broadway Pharmacy
13 located in Sacramento, California, Respondent violated the following state laws regulating
14 controlled substances:

15 a. **Health & Saf. Code Section 11351:** On and between May 1, 2004, and
16 July 30, 2004, Respondent unlawfully possessed for sale various quantities of hydrocodone, a
17 controlled substance.

18 b. **Health & Saf. Code section 11173, subdivision (a):** On and between
19 May 1, 2004, and July 30, 2004, Respondent unlawfully obtained and attempted to obtain
20 hydrocodone, a controlled substance, and procured and attempted to procure the administration
21 of and prescription for hydrocodone by fraud, deceit and misrepresentation.

22 c. **Health & Saf. Code section 11350, subdivision (a):** On or about August
23 3, 2004, Respondent unlawfully had in his possession hydrocodone, a controlled substance.

24 d. **Health & Saf. Code section 11357, subdivision (b):** On or about August
25 3, 2004, Respondent unlawfully possessed not more than 28.5 grams of marijuana.

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