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

In the Matter of the Accusation Against:	Case No. 3090
LUIS EDUARDO OLIVARES 422 Chestnut Avenue Manteca, California 95336	·
c/o California State Prison, Corcoran CDC #F08953 4001 King Avenue P.O. Box 8800 Corcoran, California 93212	
Pharmacy Technician License No. TCH 53234	
Respondent.	
DECISION AND	ORDER
The attached Stipulated Surrender of I	License and Order is hereby adopted by th
Board of Pharmacy, Department of Consumer Affair	s, as its Decision in this matter.
This Decision shall become effective	on November 8, 2007

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

It is so ORDERED <u>October 9, 2007</u>.

WILLIAM POWERS

**Board President** 

1	of the State of California	· ·			
2	ARTHUR D. TAGGART				
3	Supervising Deputy Attorney General STERLING A. SMITH, State Bar No. 84287				
4	Deputy Attorney General California Department of Justice				
5	1300 I Street, Suite 125 P.O. Box 944255				
6	Sacramento, CA 94244-2550 Telephone: (916) 323-3795				
7	Facsimile: (916) 324-5567				
8	Attorneys for Complainant				
9	BEFORE THE BOARD OF PHARMACY				
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
11	In the Matter of the Accusation Against:	Case No. 3090			
12	LUIS EDUARDO OLIVARES	CENTRAL AGEN CHINDENDED OF			
13	422 Chestnut Avenue Manteca, California 95336	STIPULATED SURRENDER OF LICENSE AND ORDER			
14	c/o California State Prison, Corcoran CDC #F08953				
15	4001 King Avenue				
16	P.O. Box 8800 Corcoran, California 93212				
17	Pharmacy Technician License No. TCH 53234				
18	Respondent.				
19		<u>.</u>			
20	IT IS HEREBY STIPULATED ANI	AGREED by and between the parties in this			
21	proceeding that the following matters are true:				
22	<u>PARTIE</u>	<u>ES</u>			
23	1. Virginia Herold (Complainan	t) is the Executive Officer of the Board of			
24	Pharmacy. She brought this action solely in her off	icial capacity and is represented in this matter			
25	by Edmund G. Brown Jr., Attorney General of the State of California, by Sterling A. Smith,				
26	Deputy Attorney General.				
27	2. Luis Eduardo Olivares ("Resp	condent") is representing himself in this			
28	proceeding and has chosen not to exercise his right	to be represented by counsel.			

- 3. On or about December 16, 2003, the Board of Pharmacy ("Board") issued Pharmacy Technician License No. TCH 53234 to Respondent. The Pharmacy Technician License expired on July 31, 2007, and has not been renewed.
- 4. On or about June 15, 2007, Respondent was served with "Notice of Automatic and Interim Suspension of Luis Eduardo Olivares, Business and Professions Code section 4311; Request for Hearing" arising from his felony conviction on February 28, 2007, for violating California Penal Code section 288(a). No hearing was requested by Respondent thereon.

## **JURISDICTION**

5. Accusation No. 3090 was filed before the Board of Pharmacy, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 3, 2007. Respondent timely submitted correspondence on or about July 12, 2007, indicating that he was contesting the Accusation. A copy of Accusation No. 3090 is attached as exhibit A and incorporated herein by reference.

## **ADVISEMENT AND WAIVERS**

- 6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3090. Respondent also has carefully read, and fully understands the effects of this Stipulated Surrender of License and Order.
- 7. 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.
- 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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## **CULPABILITY**

- 9. Respondent admits the truth of each and every charge and allegation in Accusation No. 3090, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician License No. TCH 53234 for the Board's formal acceptance.
- 10. Respondent understands that by signing this stipulation, he enables the Board to issue an order accepting the surrender of his Pharmacy Technician License without further process.

#### CONTINGENCY

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.

## **OTHER MATTERS**

- 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 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:

#### **ORDER**

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 53234,

issued to Respondent Luis Eduardo Olivares 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.
- 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 both his Pharmacy

  Technician wall and pocket license certificate on or before the effective date of the Decision and

  Order.
- 4. Respondent understands and agrees that if he 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 may not apply for licensure or petition for reinstatement of his revoked license certification for three (3) years from the date of this decision. 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. 3090 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 5. Should Respondent 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. 3090 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.
- 6. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$2,646.50 prior to issuance of a new or reinstated license.

## <u>ACCEPTANCE</u>

I have carefully read the Stipulated Surrender of License and Order. I understand

1	the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this
2	Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
3	
4	///
5	be bound by the Decision and Order of the Board of Pharmacy.
6	DATED: 8-26-07.
7	
8	Just E. Olivanes
9	Luis Eduardo Olivares Respondent
10	
11	<u>ENDORSEMENT</u>
12	The foregoing Stipulated Surrender of License and Order is hereby respectfully
13	submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.
14	DATED: 8-30-07
15	EDMUND G. BROWN JR., Attorney General of the State of California
16	ARTHUR D. TAGGART
17	Supervising Deputy Attorney General
18	A A
19	Also This
20	STERVING A. SMICH Deputy Attorney General
21	Attorneys for Complainant
22	7 Monioys for Complainant
23	DOJ Matter ID: SA2007101366
24	Surrender of License.wpd
25	
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Exhibit A
Accusation No. 3090

1	EDMUND G. BROWN, JR., Attorney General	
2	of the State of California ARTHUR TAGGART,	
3	Lead Supervising Deputy Attorney General STERLING A. SMITH, State Bar # 84287	
4	Deputy Attorney General California Department of Justice	
5	1300 I Street, Suite 125 P.O. Box 944255	
6	Sacramento, CA 94244-2550 Telephone: (916) 323-3795	
7	Facsimile: (916) 324-5567	
8	Attorneys for Complainant	
.9	BEFORE T BOARD OF PHA	ARMACY
10	DEPARTMENT OF CON STATE OF CAL	IFORNIA
11	I. the Motter of the Acquestion Against	Case No. 3090
12	In the Matter of the Accusation Against:	OAH No.
13	LUIS EDUARDO OLIVARES 422 Chestnut Avenue	ACCUSATION
14	Manteca, California 95336	ACCOMITO
15	c/o California State Prison-Corcoran CDC #F08953	
16	4001 King Avenue P.O. Box 8800	
17	Corcoran, California 93212	
18	Pharmacy License No. TCH 53234	
	Respondent.	
19	Complainant alleges:	0
20	PARTIE	S
21		nant) brings this Accusation solely in her
22		
23	official capacity as the Executive Officer of the Boar	
24		03, the Board of Pharmacy issued Pharmacy
25	License Number TCH 53234 to Luis Eduardo Oliva	res (Respondent). Said license will expire on
26	or about July 31, 2007, unless renewed.	
27	111	
28	1//	

JURISDICTION

- 2 3 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 22 23 24
- This Accusation is brought before the Board of Pharmacy (Board), under 3. the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
  - Section 4300 of the Code states, in pertinent part, that:
  - "(a) Every license issued may be suspended or revoked.
- "(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
  - "(1) Suspending judgment.
  - "(2) Placing him or her upon probation.
  - "(3) Suspending his or her right to practice for a period not exceeding one year.
  - "(4) Revoking his or her license.
- "(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
  - Section 4301 of the Code states: 5.

"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:

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"(1) The conviction of a crime substantially 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. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order

or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

to fix the degree of discipline or, in the case of a conviction not involving controlled substances

- 6. Penal Code section 288(a) provides, in pertinent part, that any person who willfully and lewdly commits any lewd and lascivious act, including any of the acts constituting other crimes provided in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.
- 7. Section 4311(c)(4) of the Code provides, in pertinent part, that "a conviction of any crime referred to in Section 4301, or for violation of Sections 187, 261, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee of the board."
- 8. Section 125.3 of the Code states, 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.

# CAUSE FOR DISCIPLINE

(Criminal Conviction)

9. Respondent is subject to disciplinary action under Code section 4301(1) in that on or about February 28, 2007, Respondent was convicted by a plea of *nolo contendre* to

1	violation of Penal Code section 288(a), a felony, and is incarcerated in the State prison for a term
2	of eight years. Said criminal conviction is substantially related to the qualifications, functions
3	and duties of a pharmacy technician.
4	<u>PRAYER</u>
5	WHEREFORE, Complainant requests that a hearing be held on the matters herein
6	alleged, and that following the hearing, the Board of Pharmacy issue a decision:
7	A Revoking or suspending Pharmacy License Number TCH 53234, issued to
8	Luis Eduardo Olivares.
9	B. Ordering Luis Eduardo Olivares to pay the Board of Pharmacy the
10	reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11	Professions Code section 125.3.
12	C. Taking such other and further action as deemed necessary and proper.
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14	DATED: 6/22/07
15	
16	
17	
18	
19	VIRGINIA K. NEROLD
20	Executive Officer Board of Pharmacy
21	Department of Consumer Affairs State of California
22	Complainant
23	
24	

SA2005104417

Accusation.wpd