

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

In the Matter of the Accusation Against:

Case No. 3123

FLETCHER MED PHARMACY
8881 Fletcher Parkway, Suite #103
La Mesa, CA 91942
TYCHAR CORPORATION, OWNER
LASHARA C. SMITH, PRESIDENT
WILLIAM MC CURINE, JR., VICE
PRESIDENT
YOLANDA PHILLIPS, SECRETARY
DAVID E. BELL, TREASURER
Pharmacy Permit No. PHY44780,

and

LASHARA SMITH
1832 Madera Street
Lemon Grove, CA 91945
Pharmacy Technician No. TCH 8245

and

JOHN EDINGTON
15714 Greystone Drive
Sun City West, AZ 85375
Pharmacist License No. RPH 20579

Respondents.

DECISION AND ORDER

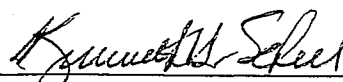
The attached Stipulated Surrender of License and Order as to Respondent John Edington is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 17, 2008.

It is so ORDERED August 18, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


KENNETH H. SCHELL

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR, State Bar No. 174721
Deputy Attorney General
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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3123

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14 **TYCHAR CORPORATION, OWNER**
LASHARA C. SMITH, PRESIDENT
15 **WILLIAM MC CURINE, JR., VICE**
PRESIDENT
16 **YOLANDA PHILLIPS, SECRETARY**
DAVID E. BELL, TREASURER
17 Pharmacy Permit No. PHY44780,

STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
RESPONDENT JOHN EDINGTON

18 and

19 **LASHARA SMITH**
1832 Madera Street
20 Lemon Grove, CA 91945
Pharmacy Technician No. TCH 8245

21 and

22 **JOHN EDINGTON**
15714 Greystone Drive
23 Sun City West, AZ 85375
24 Pharmacist License No. RPH 20579

25 Respondents.

26 In the interest of a prompt and speedy resolution of this matter, consistent with the
27 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer
28 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which

1 will be submitted to the Board for approval and adoption as the final disposition of the
2 Accusation.

3 PARTIES

4 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
5 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
6 by Edmund G. Brown Jr., Attorney General of the State of California, by Diane de Kervor,
7 Deputy Attorney General.

8 2. John Edington (Respondent Edington) is representing himself in this
9 proceeding and has chosen not to exercise his right to be represented by counsel.

10 3. On or about February 15, 1958, the Board of Pharmacy issued Original
11 Pharmacist License No. RPH 20579 to John C. Edington (Respondent Edington). The
12 Registered Pharmacist license is renewed until April 30, 2010.

13 JURISDICTION

14 4. Accusation No. 3123 was filed before the Board of Pharmacy (Board),
15 Department of Consumer Affairs, and is currently pending against Respondent Edington. The
16 Accusation and all other statutorily required documents were properly served on Respondent
17 Edington on March 25, 2008. A copy of Accusation No. 3123 is attached as exhibit A and
18 incorporated herein by reference.

19 ADVISEMENT AND WAIVERS

20 5. Respondent Edington has carefully read, and understands the charges and
21 allegations in Accusation No. 3123. Respondent Edington also has carefully read, and
22 understands the effects of this Stipulated Surrender of License and Order.

23 6. Respondent Edington is fully aware of his legal rights in this matter,
24 including the right to a hearing on the charges and allegations in the Accusation; the right to be
25 represented by counsel, at his own expense; the right to confront and cross-examine the witnesses
26 against him; the right to present evidence and to testify on his own behalf; the right to the
27 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
28 the right to reconsideration and court review of an adverse decision; and all other rights accorded

1 by the California Administrative Procedure Act and other applicable laws.

2 7. Respondent Edington voluntarily, knowingly, and intelligently waives and
3 gives up each and every right set forth above.

4 CULPABILITY

5 8. Respondent Edington admits the truth of each and every charge and
6 allegation in Accusation No. 3123, agrees that cause exists for discipline and hereby surrenders
7 his Pharmacist License No. RPH 20579 for the Board's formal acceptance.

8 9. Respondent Edington understands that by signing this stipulation he
9 enables the Board to issue an order accepting the surrender of his Pharmacist License without
10 further process.

11 CONTINGENCY

12 10. This stipulation shall be subject to approval by the Board of Pharmacy.
13 Respondent Edington understands and agrees that counsel for Complainant and the staff of the
14 Board of Pharmacy may communicate directly with the Board regarding this stipulation and
15 surrender, without notice to or participation by Respondent Edington. By signing the stipulation,
16 Respondent Edington understands and agrees that he may not withdraw his agreement or seek to
17 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to
18 adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order
19 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
20 between the parties, and the Board shall not be disqualified from further action by having
21 considered this matter.

22 11. The parties understand and agree that facsimile copies of this Stipulated
23 Surrender of License and Order, including facsimile signatures thereto, shall have the same force
24 and effect as the originals.

25 12. In consideration of the foregoing admissions and stipulations, the parties
26 agree that the Board may, without further notice or formal proceeding, issue and enter the
27 following Order:

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ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 20579, issued to Respondent John Edington is surrendered and accepted by the Board of Pharmacy.

13. The surrender of Respondent Edington's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent Edington. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

14. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

15. Respondent shall cause to be delivered to the Board both his wall and pocket license certificate on or before the effective date of the Decision and Order.

16. 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 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. 3123 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition. Respondent may not reapply for licensure for three years from the effective date of the Decision.

17. 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. 3123 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.

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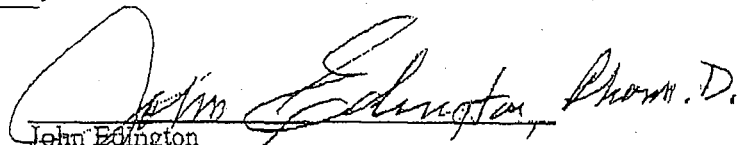
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1 18. Respondent shall pay the Board its costs of investigation and enforcement
2 in the amount of \$2,000.00 prior to issuance of a new or reinstated license.

3 ACCEPTANCE

4 I have carefully read the Stipulated Surrender of License and Order. I understand
5 the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated
6 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
7 by the Decision and Order of the Board of Pharmacy.

8 DATED: 5/26/08

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10 
11 John Edington, Pharm.D.
Respondent

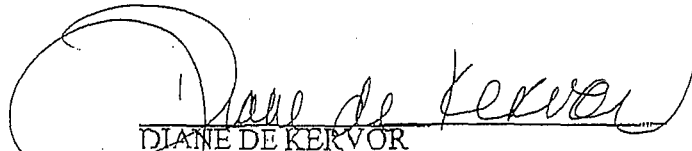
12 ENDORSEMENT

13 The foregoing Stipulated Surrender of License and Order is hereby respectfully
14 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

15
16 DATED: May 27, 2008

17 EDMUND G. BROWN JR., Attorney General
of the State of California

18 JAMES M. LEDAKIS
19 Supervising Deputy Attorney General

20
21 
22 DIANE DE KERVOR
Deputy Attorney General

23 Attorneys for Complainant
24

Exhibit A
Accusation No. 3123

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR, State Bar No. 174721
Deputy Attorney General
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7 Attorneys for Complainant

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DAVID E. BELL, TREASURER
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LASHARA SMITH
1832 Madera Street
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Pharmacy Technician No. TCH 8245

and

JOHN EDINGTON
15714 Greystone Drive
Sun City West, AZ 85375
Pharmacist License No. RPH 20579

ACCUSATION

Respondents.

Complainant alleges:

PARTIES

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.

1 2. On or about August 17, 2000, the Board of Pharmacy issued Original
2 Pharmacy Permit Number PHY 44780 to Tychar Inc.. Owner: Lashara C. Smith. President:
3 William Mc Curine, Jr.. Vice President; Yolanda Phillips. Secretary; and David E. Bell,
4 Treasurer. to do business as Fletcher Med Pharmacy (Respondents). The Pharmacy License
5 expired on August 1, 2007 and has not been renewed.

6 3. On or about July 2, 1993, the Board of Pharmacy issued Pharmacy
7 Technician No. TCH 8245 to LaShara (Respondent Smith). The Pharmacy Technician license
8 will expire on May 31, 2009, unless renewed.

9 4. On or about February 15, 1958, the Board of Pharmacy issued Original
10 Pharmacist License No. RPH 20579 to John C. Edington (Respondent Edington). The
11 Registered Pharmacist license will expire on April 30, 2008, unless renewed.

12 JURISDICTION AND STATUTORY AUTHORITY

13 5. This Accusation is brought before the Board of Pharmacy (Board),
14 Department of Consumer Affairs, under the authority of the following laws. All section
15 references are to the Business and Professions Code unless otherwise indicated.

16 6. Section 118, subdivision (b) provides that the expiration of a license shall
17 not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
18 within which the license may be renewed, restored, reissued or reinstated.

19 7. Section 498 of the Code states:

20 A board may revoke, suspend, or otherwise restrict a license on the ground that
21 the licensee secured the license by fraud, deceit, or knowing misrepresentation of
a material fact or by knowingly omitting to state a material fact.

22 8. Section 4081 of the Code states:

23 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
24 drugs or dangerous devices shall be at all times during business hours open to
inspection by authorized officers of the law, and shall be preserved for at least
25 three years from the date of making. A current inventory shall be kept by every
26 manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
27 or establishment holding a currently valid and unrevoked certificate, license,
permit, registration, or exemption under Division 2 (commencing with Section
1200) of the Health and Safety Code or under Part 4 (commencing with Section
28 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
of dangerous drugs or dangerous devices.

1 (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
2 food-animal drug retailer shall be jointly responsible, with the
3 pharmacist-in-charge or representative-in-charge, for maintaining the records and
inventory described in this section.

4 (c) The pharmacist-in-charge or representative-in-charge shall not be criminally
5 responsible for acts of the owner, officer, partner, or employee that violate this
6 section and of which the pharmacist-in-charge or representative-in-charge had no
knowledge, or in which he or she did not knowingly participate.

7 9. Section 4110 of the Code, in pertinent part states:

8 (a) No person shall conduct a pharmacy in the State of California unless he or she
9 has obtained a license from the board. A license shall be required for each
10 pharmacy owned or operated by a specific person. A separate license shall be
11 required for each of the premises of any person operating a pharmacy in more than
one location. The license shall be renewed annually. The board may, by
regulation, determine the circumstances under which a license may be transferred.

12 10. Section 4113 of the Code, in pertinent part states:

13 (a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days
14 thereof, shall notify the board in writing of the identity and license number of that
pharmacist and the date he or she was designated.

15 (b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
16 with all state and federal laws and regulations pertaining to the practice of
pharmacy.

17 11. Section 4115 of the Code, in pertinent part states:

18 (a) A pharmacy technician may perform packaging, manipulative, repetitive, or
19 other nondiscretionary tasks, only while assisting, and while under the direct
supervision and control of a pharmacist.

20 (b) This section does not authorize the performance of any tasks specified in
21 subdivision (a) by a pharmacy technician without a pharmacist on duty.

22 (c) This section does not authorize a pharmacy technician to perform any act
requiring the exercise of professional judgment by a pharmacist.

23 12. Section 4116 of the Code states, in pertinent part:

24 (a) No person other than a pharmacist, an intern pharmacist, an authorized officer
25 of the law, or a person authorized to prescribe shall be permitted in that area,
26 place, or premises described in the license issued by the board wherein controlled
substances or dangerous drugs or dangerous devices are stored, possessed,
prepared, manufactured, derived, compounded, dispensed, or repackaged.
27 However, a pharmacist shall be responsible for any individual who enters the

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1 pharmacy for the purposes of receiving consultation from the pharmacist or
2 performing clerical, inventory control, housekeeping, delivery, maintenance, or
3 similar functions relating to the pharmacy if the pharmacist remains present in the
4 pharmacy during all times as the authorized individual is present.

5 13. Section 4156 provides that a pharmacy corporation shall not do, or fail to
6 do, any act where doing or failing to do the act would constitute unprofessional conduct under
7 any statute or regulation. In the conduct of its practice, a pharmacy corporation shall observe and
8 be bound by the laws and regulations that apply to a person licensed under this chapter.

9 14. Section 4201 of the Code, in pertinent part states:

10 (f) Notwithstanding any other provision of law, the pharmacy license shall
11 authorize the holder to conduct a pharmacy. The license shall be renewed annually
12 and shall not be transferable.

13 15. Section 4301 of the Code states, in pertinent part:

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

18 (g) Knowingly making or signing any certificate or other document that falsely
19 represents the existence or nonexistence of a state of facts.

20 (q) Engaging in any conduct that subverts or attempts to subvert an investigation
21 of the board.

22 16. Section 4305 of the Code states, in pertinent part:

23 (a) Any person who has obtained a license to conduct a pharmacy, shall notify the
24 board within 30 days of the termination of employment of any pharmacist who
25 takes charge of, or acts as manager of the pharmacy. Failure to notify the board
26 within the 30-day period shall constitute grounds for disciplinary action.

27 (c) Any pharmacist who takes charge of, or acts as manager of a pharmacy, who
28 terminates his or her employment at the pharmacy, shall notify the board within
30 days of termination of employment. Failure to notify the board within the
30-day period shall constitute grounds for disciplinary action.

31 17. Section 4328 of the Code states:

32 Except as otherwise provided in this chapter, any person who permits the
33 compounding or dispensing of prescriptions, or the furnishing of dangerous drugs
34 in his or her pharmacy, except by a pharmacist, is guilty of a misdemeanor.

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18. Section 4330 of the Code states, in pertinent part:

(a) Any person who has obtained a license to conduct a pharmacy, who fails to place in charge of the pharmacy a pharmacist, or any person, who by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs, in his or her pharmacy, except by a pharmacist, or as otherwise provided in this chapter, is guilty of a misdemeanor.

19. Health and Safety Code section 11162.1 specifies the prescription form for controlled substances.

20. Health and Safety Code section 11165 describes the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances. It provides that for each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, the dispensing pharmacy shall provide certain detailed information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice.

REGULATORY AUTHORITY

21. California Code of Regulations, title 16, section 1707.2, in pertinent part, states:

(f) In every pharmacy subject to the provisions of Business and Professions Code Section 4122, there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers the following notice:

"NOTICE TO CONSUMERS"

At your request, this pharmacy will provide its current retail price of any prescription without obligation. You may request price information in person or by telephone. Ask your pharmacist if a lower-cost generic drug is available to fill your prescription. Prescription prices for the same drug vary from pharmacy to pharmacy. One reason for differences in price is differences in services provided. Before taking any prescription medicine, talk to your pharmacist; be sure you know: What is the name of the medicine and what does it do? How and when do I take it - and for how long? What if I miss a dose? What are the possible side effects and what should I do if they occur? Will the new medicine work safely with other medicines and herbal supplements I am taking? What foods, drinks or activities should I avoid while taking this medicine? Ask your pharmacist if you have additional questions.

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1 22. California Code of Regulations, title 16, section 1714, states, in pertinent
2 part:

3 (d) Each pharmacist while on duty shall be responsible for the security of the
4 prescription department, including provisions for effective control against theft or
5 diversion of dangerous drugs and devices, and records for such drugs and devices.
6 Possession of a key to the pharmacy where dangerous drugs and controlled
7 substances are stored shall be restricted to a pharmacist.

8 (e) The pharmacy owner, the building owner or manager, or a family member of a
9 pharmacist owner (but not more than one of the aforementioned) may possess a
10 key to the pharmacy that is maintained in a tamper evident container for the
11 purpose of 1) delivering the key to a pharmacist or 2) providing access in case of
12 emergency. An emergency would include fire, flood or earthquake. The signature
13 of the pharmacist-in-charge shall be present in such a way that the pharmacist may
14 readily determine whether the key has been removed from the container.

15 23. California Code of Regulations, title 16, section 1715(a)

16 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or
17 section 4037 of the Business and Professions Code shall complete a
18 self-assessment of the pharmacy's compliance with federal and state pharmacy
19 law. The assessment shall be performed before July 1 of every odd-numbered
20 year. The primary purpose of the self-assessment is to promote compliance
21 through self-examination and education.

22 24. California Code of Regulations, title 16, section 1715.5, states, in pertinent
23 part:

24 The collection of information authorized by Health and Safety Code section
25 11165 shall be provided as follows:

26 (a) For each prescription for a Schedule II controlled substance, the dispensing
27 pharmacy shall provide the following information: the full name and address of
28 the patient; the gender and date of birth of the patient; the DEA (Drug
Enforcement Administration) number of the prescriber; the triplicate prescription
number; the pharmacy prescription number; the pharmacy license number; the
NDC (National Drug Code) number and the quantity of the controlled substance;
the ICD-9 (diagnosis code), if available; the date of issue of the prescription, the
date of dispensing of the prescription, and the state medical license number of any
prescriber using the DEA number of a government exempt facility.

29 25. California Code of Regulations, title 16, section 1717, in pertinent part
30 states :

31 (c) Promptly upon receipt of an orally transmitted prescription, the pharmacist
32 shall reduce it to writing, and initial it, and identify it as an orally transmitted
33 prescription. If the prescription is then dispensed by another pharmacist, the
34 dispensing pharmacist shall also initial the prescription to identify him or herself.

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All orally transmitted prescriptions shall be received and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing.

Chart orders as defined in Section 4019 of the Business and Professions Code are not subject to the provisions of this subsection.

26. California Code of Regulations, title 16, section 1793, provides:

'Pharmacy technician' means an individual who, under the direct supervision and control of a pharmacist, performs packaging, manipulative, repetitive, or other nondiscretionary tasks related to the processing of a prescription in a pharmacy, but who does not perform duties restricted to a pharmacist under section 1793.1.

27. California Code of Regulations, title 16, section 1793.7 provides:

(a) Except as otherwise provided in section 1793.8, any function performed by a pharmacy technician in connection with the dispensing of a prescription, including repackaging from bulk and storage of pharmaceuticals, must be verified and documented in writing by a pharmacist. Except for the preparation of prescriptions for an inpatient of a hospital and for an inmate of a correctional facility, the pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

(b) Pharmacy technicians must work under the direct supervision of a pharmacist and in such a relationship that the supervising pharmacist is fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

(d) Any pharmacy employing or using a pharmacy technician shall develop a job description and written policies and procedures adequate to ensure compliance with the provisions of Article 11 of this Chapter, and shall maintain, for at least three years from the time of making, records adequate to establish compliance with these sections and written policies and procedures.

(e) A pharmacist shall be responsible for all activities of pharmacy technicians to ensure that all such activities are performed completely, safely and without risk of harm to patients.

28. Code of Federal Regulations, title 21, section 1304.04 in pertinent part

states:

(h) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained in a separate prescription file. . .

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1 29. Code of Federal Regulations, title 21, section 1305.05 in pertinent part
2 states:

3 (a) A registrant may authorize one or more individuals, whether or not located at
4 his or her registered location, to issue orders for Schedule I and II controlled
5 substances on the registrant's behalf by executing a power of attorney for each
6 such individual, if the power of attorney is retained in the files, with executed Forms 222 where applicable, for the
same period as any order bearing the signature of the attorney. The power of
attorney must be available for inspection together with other order records.

7 COSTS

8 30. Section 125.3 provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations
10 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 CAUSES FOR DISCIPLINE

13 Causes for Discipline Against Fletcher Med Pharmacy

14 FIRST CAUSE FOR DISCIPLINE

15 (Failure to Maintain Secure Storage of Dangerous Drugs and Controlled Substances)

16 31. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
17 California Code of Regulations, title 16, section 1714(d) in that it failed to keep storage of
18 dangerous drugs and controlled substances secure by permitting non-pharmacists to maintain
19 keys to the pharmacy. The circumstances are as follows:

20 32. On or about June 28, 2007, J.B., a non-pharmacist employee, had a key to
21 the pharmacy on her key chain and reported to the investigator that she routinely opened and
22 closed the pharmacy for pharmacists.

23 33. Respondent Smith, also a non-pharmacist, also admitted that she
24 maintained a key to the pharmacy.

25 SECOND CAUSE FOR DISCIPLINE

26 (Failure to Maintain Separate Records of Schedule II Controlled Substances)

27 34. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
28 Code of Federal Regulations, Title 21, section 1304.04(h)(1) in that on or about July 10, 2007, all

1 CII prescriptions at Fletcher Med Pharmacy were filed commingled with all of the other
2 prescriptions at the pharmacy, as opposed to in separate prescription files.

3 THIRD CAUSE FOR DISCIPLINE

4 (Failure to Post Notice to Consumer (NTC) Notice)

5 35. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
6 California Code of Regulations, title 16, section 1707.2 (f) in that on or about July 10, 2007,
7 Fletcher Med Pharmacy failed to post a NTC in its pharmacy.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Failure to Develop and Maintain a Job Description
10 and Written Policy and Procedures for Pharmacy Technicians)

11 36. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
12 California Code of Regulations, title 16, section 1793.7 (d) in that on or about July 10, 2007,
13 Fletcher Med Pharmacy did not produce or maintain a job description and written policies and
14 procedures for Pharmacy Technicians employed at the pharmacy.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Failure to Report Controlled Substance
17 Utilization and Evaluation System (CURES) Prescriptions Data)

18 37. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
19 Health and Safety Code section 11165(d) and California Code of Regulations, Title 16, section
20 1715.5(a) in that on or about July 10, 2007, it was discovered that Fletcher Med Pharmacy had
21 neglected to submit Schedule CII-V prescription reports to the Department of Justice pursuant to
22 the CURES program on a regular basis since sometime in the year 2005. Such reports are
23 mandated to be submitted on a weekly basis.

24 SIXTH CAUSE FOR DISCIPLINE

25 (Failure to Maintain Security of Dangerous Drugs and Devices in Pharmacy)

26 38. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
27 Code sections 4116(a) and 4328 in that it permitted non-pharmacists to perform pharmacist

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1 duties thereby failing to maintain the security of dangerous drugs and devices at the pharmacy.

2 The circumstances are as follows:

3 39. On or about June 28, 2007, Fletcher Med Pharmacy permitted L.S., a non-
4 pharmacist, to perform pharmacist duties at the pharmacy for part of the day.

5 40. On or about June 28, 2007, Fletcher Med Pharmacy was open and
6 operating without a pharmacist on duty for the rest of the day.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 (Failure to Require Security Prescription for a Controlled Substance Prescription)

9 41. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
10 Health and Safety Code section 11162.1 in that on February 28, 2007, Fletcher Med Pharmacy
11 accepted and dispensed Rx # 675062 for #12 Percocet tablets, a CII medication, on a non-
12 security form.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 (Failure to Verify and Document Technician's Duties /Functions
15 and Initial Prescriptions Filled by Technicians)

16 42. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
17 Code section 4115(a) through (d) and California Code of Regulations, Title 16, section 1793.7(a)
18 and (b) in that numerous prescriptions in the Fletcher Med Pharmacy's prescription files did not
19 bear pharmacist initials verifying the prescription. The prescriptions appear to have been filled
20 by technicians, without the oversight of a pharmacist. Fletcher Med Pharmacy did not document
21 in writing the functions performed by the technicians in connection with the filing of these
22 prescriptions. The circumstances are as follows:

23 43. On or about February 27, 2007 Fletcher Med Pharmacy issued new
24 prescription Rx #675046 which did not bear a pharmacist's initials on the label or in the
25 electronic system data verifying the technician's functions.

26 44. On or about March 1, 2007 Fletcher Med Pharmacy issued new
27 prescription Rx #675096 which did not bear a pharmacist's initials on the label or in the
28 electronic system data verifying the technician's functions.

1 45. On or about March 8, 2007 Fletcher Med Pharmacy issued new
2 prescription Rx #675230 which did not bear a pharmacist's initials on the label or in the
3 electronic system data verifying the technician's functions.

4 46. On or about March 9, 2007 Fletcher Med Pharmacy issued new
5 prescription Rx #675242 which did not bear a pharmacist's initials on the label or in the
6 electronic system data verifying the technician's functions.

7 NINTH CAUSE FOR DISCIPLINE

8 (Failure to Complete Orally Transmitted Prescriptions)

9 47. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
10 California Code of Regulations, Title 16, section 1717(c) in that numerous orally transmitted
11 prescriptions did not bear the initials of the recipient pharmacist and/or the date the prescription
12 was taken. The circumstances are as follows:

13 48. On or about February 27, 2007, Fletcher Med Pharmacy dispensed
14 prescription Rx #675045, an oral prescription, which did not bear the initials of the recipient
15 pharmacist and/or the date the prescription was taken.

16 49. On or about February 27, 2007, Fletcher Med Pharmacy dispensed
17 prescription Rx #675046, an oral prescription, which did not bear the initials of the recipient
18 pharmacist and/or the date the prescription was taken.

19 50. On or about March 1, 2007, Fletcher Med Pharmacy dispensed
20 prescription Rx #675096, an oral prescription, which did not bear the initials of the recipient
21 pharmacist and/or the date the prescription was taken.

22 51. On or about March 8, 2007, Fletcher Med Pharmacy dispensed
23 prescription Rx #675230, an oral prescription, which did not bear the initials of the recipient
24 pharmacist and/or the date the prescription was taken.

25 52. On or about March 9, 2007, Fletcher Med Pharmacy dispensed
26 prescription Rx #675242, an oral prescription, which did not bear the initials of the recipient
27 pharmacist and/or the date the prescription was taken.

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1 53. On or about March 13, 2007, Fletcher Med Pharmacy dispensed
2 prescription Rx #675282, an oral prescription, which did not bear the initials of the recipient
3 pharmacist and/or the date the prescription was taken.

4 54. On or about March 13, 2007, Fletcher Med Pharmacy dispensed
5 prescription Rx #675279, an oral prescription, which did not bear the initials of the recipient
6 pharmacist and/or the date the prescription was taken.

7 TENTH CAUSE FOR DISCIPLINE

8 (Failure to Complete and File a Self-assessment Form)

9 55. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
10 California Code of Regulations, Title 16, section 1715(a) in that the pharmacy did not file its Self
11 Assessment that was due on or before July 1, 2007. Although a Self Assessment is due before
12 July 1 of every odd numbered year, the last Self Assessment filed by Fletcher Med Pharmacy was
13 in 2003.

14 ELEVENTH CAUSE FOR DISCIPLINE

15 (Failure to Authorize Individuals to Issue Orders for CII Controlled Substances)

16 56. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
17 Code of Federal Regulations, Title 21, section 1305.05(a) and (d) in that individuals other than
18 Respondent Smith, the only Registrant with the DEA at the pharmacy, issued orders for CII
19 controlled substances. Pursuant to section 1305.05(a), no other individual at the pharmacy is
20 permitted to fill such orders without a Power of Attorney executed by the Respondent Smith, the
21 DEA Registrant, to them individually being maintained on file at the Pharmacy. The
22 circumstances are as follows:

23 57. On or about May 7, 2007, DEA 222 form number 65071755 was issued by
24 an individual other than Respondent Respondent Smith. No Power of Attorney was on file
25 permitting another individual to issue orders for CII controlled substances.

26 58. On or about June 4, 2007, DEA 222 form number 6591741 was issued by
27 an individual other than Respondent Smith. No Power of Attorney was on file permitting
28 another individual to issue orders for CII controlled substances.

1 TWELFTH CAUSE FOR DISCIPLINE

2 (Failure to Notify Board of Dissociation of Pharmacist in Charge)

3 59. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
4 Code section 4305(a) in that it failed to notify the Board within thirty days of the disassociation
5 that its Pharmacist in Charge (Respondent Edington), who disassociated from that position at the
6 pharmacy on July 1, 2005.

7 THIRTEENTH CAUSE FOR DISCIPLINE

8 (Failure to Designate a Pharmacist in Charge)

9 60. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
10 Code sections 4113(a) and 4330(a) in that it failed to designate a new Pharmacist in Charge, and
11 notify the Board of the identity of same, after its previous Pharmacist in Charge (Respondent
12 Edington) terminated his employment at the pharmacy on July 1, 2005.

13 FOURTEENTH CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct: Obtaining License by Providing False Documents to the Board)

15 61. Respondent Fletcher Med Pharmacy is subject to disciplinary action for
16 unprofessional conduct pursuant to Code sections 4156 and 4301(g) in that on or about August 1,
17 2006, the pharmacy renewed its pharmacy license by providing the Board with the forged
18 signature of its previous Pharmacist in Charge (Respondent Edington) on the renewal document.

19 FIFTEENTH CAUSE FOR DISCIPLINE

20 (Operating a Pharmacy Without a License)

21 62. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
22 Code sections 4110(a) and 4201(f) in that it continued to operate after its license expired on
23 August 1, 2007, and without a valid renewal from the Board.

24 SIXTEENTH CAUSE FOR DISCIPLINE

25 (Failure to Maintain Accurate Records of Acquisition and Disposition)

26 63. Respondent Fletcher Med Pharmacy is subject to disciplinary action under
27 Code section 4081 in that the pharmacy did not keep accurate acquisition records for dangerous
28 drugs for the three years required by the statute. The circumstances are as follows:

1 64. On or about June 11, 2007, the pharmacy ordered Oxycodone APAP
2 10/650 on DEA 222 form 6501742, but the pharmacy did not have the record on file for this drug
3 acquisition.

4 Causes for Discipline Against John Edington

5 FIRST CAUSE FOR DISCIPLINE

6 (Failure to Notify the Board of Dissociation as Pharmacist in Charge)

7 65. Respondent John Edington is subject to disciplinary action under Code
8 section 4305(c) in that he failed to notify the Board within 30 days of his disassociation as
9 Pharmacist in Charge of Fletcher Med Pharmacy on July 1, 2005.

10 SECOND CAUSE FOR DISCIPLINE

11 (Failure to Complete a Self Assessment)

12 66. Respondent John Edington is subject to disciplinary action under
13 California Code of Regulations, Title 16, section 1715(a) in that, although he was the Pharmacist
14 in Charge of Fletcher Med Pharmacy until his disassociation on July 1, 2005, he did not file the
15 Self Assessment for the pharmacy that was due on or before July 1, 2005. The Self Assessment
16 must be filed by the Pharmacist in Charge of the pharmacy before July 1 of every odd numbered
17 year. The last Self Assessment filed by Fletcher Med Pharmacy was in 2003.

18 Causes for Discipline Against LaShara Smith

19 FIRST CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct- Obtaining License by
21 Providing False Documentation to the Board)

22 67. Respondent LaShara Smith is subject to disciplinary action under Code
23 sections 498 and 4301(g) in that she forged the signature of the previous Pharmacist in Charge
24 (Respondent Edington) on the pharmacy's renewal document and then submitted that falsified
25 document to the Board on or about August 1, 2005 to renew Fletcher Park Pharmacy's license.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Subverting an Investigation)

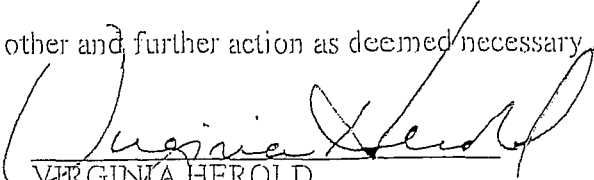
3 68. Respondent LaShara Smith is subject to disciplinary action under Code
4 section 4301(q) when she subverted the Board's investigation by ignoring the Board
5 investigator's requests for information and then not providing accurate information regarding
6 L.S., a non-pharmacist, who acted as a pharmacist at Fletcher Med Pharmacy on a regular basis
7 from 2006 up to and including June 28, 2007.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 11 1. Revoking or suspending Pharmacy Permit No. PHY44780, issued to
12 Fletcher Med Pharmacy; Tychar Corporation, Owner; Lashara C. Smith, President; William Mc
13 Curine, Jr., Vice President; Yolanda Phillips, Secretary; David E. Bell, Treasurer.
- 14 2. Revoking or suspending Pharmacy Technician No. TCH 8245, issued to
15 LaShara Smith.
- 16 3. Revoking or suspending Pharmacist License No. RPH 20579, issued to
17 John Edington.
- 18 4. Ordering Fletcher Med Pharmacy, Tychar Corporation, Owner, Lashara C.
19 Smith, President, William Mc Curine, Jr., Vice President, Yolanda Phillips, Secretary, David E.
20 Bell, Treasurer; and LaShara Smith, and John Edington and to pay the Board of Pharmacy the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 125.3;
- 23 5. Taking such other and further action as deemed necessary and proper.

24 DATED: 3/11/08

25 
26 VIRGINIA HEROLD
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant