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

In the Matter of the Accusation Against: **PATRICIA ESTELLA ACOSTA** 15811 Casimir Avenue Gardena, CA 90249 Pharmacy Technician Registration No. TCH 4497 Respondent.	Case No. 3576

DECISION AND ORDER

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

This decision shall become effective on October 19, 2011.

It is so ORDERED September 19, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **PATRICIA ESTELLA ACOSTA** **15811 Casimir Avenue** **Gardena, CA 90249** **Pharmacy Technician Registration No. TCH 4497** Respondent.	Case No. 3576 OAH No. L-2010090987 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Kimberley J. Baker-Guillemet, Deputy Attorney General.

2. Patricia Estella Acosta (Respondent) is represented in this proceeding by attorney Shawna S. Nazari, Esq., whose address is:

15303 Ventura Blvd, 9th Floor

Sherman Oaks, CA 91403.

3. On or about February 8, 1993, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 4497 to Patricia Estella Acosta (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 3576 and will expire on April 30, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3576 was filed before the Board of Pharmacy (Board), 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 1, 2010. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 3576 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 3576. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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 understands that the charges and allegations in Accusation No. 3576, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacy Technician Registration.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up her right to contest that cause for discipline exists based on those charges.

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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.

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. 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.

14. 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 Registration No. TCH 4497, issued to Respondent Patricia Estella Acosta, is surrendered and accepted by the Board of Pharmacy.

15. 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.

16. 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.

17. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate within ten (10) days of the effective date of this decision.

18. Respondent understands and agrees that if he or she ever files an application for licensure or a petition for reinstatement in the State of California, the board shall treat it as a new application for licensure.

Respondent 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 he or she apply for any license from the board on or after the effective date of this decision, all allegations set forth in Accusation No. 3576 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.

19. Respondent stipulates that should she apply for any license from the board on or after the effective date of this decision, investigation and prosecution costs in the amount of five thousand dollars and no cents ($5,000.00) shall be paid to the board prior to issuance of the license.

20. If Respondent should 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. 3576 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.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Shawna S. Nazari, Esq. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 7-6-11

PATRICIA ESTELLA ACOSTA
Respondent

I have read and fully discussed with Respondent Patricia Estella Acosta the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 7-6-11

SHAWNA S. NAZARI, ESQ.
Attorney for Respondent

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Received Time Jul. 6. 2011 11:29AM No. 8867

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.

Dated: July 6, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General

KIMBERLEY J. BAKER-GUILLEMET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3576

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **PATRICIA ESTELLA ACOSTA** 15811 Casmir Avenue Gardena, CA 90249 Pharmacy Technician Registration No. TCH 4497 Respondent.	Case No. 3576 **A C C U S A T I O N**

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.

2. On or about February 8, 1993, the Board of Pharmacy (Board) issued Pharmacy Technician Registration Number TCH 4497 to Patricia Estella Acosta (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another."

6. Section 4022 states:

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

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

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

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

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7. Section 4051, subdivision (a), states:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

8. Section 4059, subdivision (a) states, in pertinent part:

"[A] person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor."

9. Section 4060 states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or [other authorized health care professional]."

10. Section 4300, subdivision (a), states that "[e] very license issued may be suspended or revoked."

11. Section 4301 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.

. . . .

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

. . . .

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

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . . 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.

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

"(p) Actions or conduct that would have warranted denial of a license."

CONTROLLED SUBSTANCES / DANGEROUS DRUGS PROVISIONS

12. "Hydrocodone is a Schedule II controlled narcotic substance pursuant to Health and Safety Code section 11055, subdivision (b)(J), and a dangerous drug pursuant to Business and Professions Code section 4022. Preparations containing hydrocodone in combination with other non-narcotic medicinal ingredients are in Schedule III.

14. "Viagra" is a brand name of sildenafil citrate, a treatment for erectile dysfunction. It is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

COST RECOVERY

13. Section 125.3 provides, in pertinent part, that the Board may request that the administrative law judge direct a licentiate found to have committed a violation or violations of

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the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially-Related Crime)

14. Respondent is subject to disciplinary action under section 4301, subdivision (l), as a result of her conviction of a crime that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician. On or about August 4, 2009, after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal Code section 487, subdivision (a) [grand theft], in the criminal proceeding entitled *The People of the State of California v. Patricia Estella Acosta* (Super. Ct. Los Angeles County, 2009, No. YA075113). Respondent was sentenced to 30 days in jail and placed on three years probation. She was also ordered to pay $2,679.60 in victim restitution. The underlying factual circumstances revolve around Respondent's arrest by officers of the Gardena Police Department, which occurred on or about April 1, 2009, and followed an eight-month investigation conducted by the Loss Prevention Manager of the CVS Pharmacy in Gardena, California, where Respondent worked as a pharmacy technician. As part of this investigation, the Loss Prevention Manager arranged for video surveillance, which revealed Respondent removing hydrocodone pills on five separate days when there were no hydrocodone sales. Respondent admitted taking 40 bottles of hydrocodone and one bottle of Viagra, and further admitted selling those controlled substances to an unidentified third party. The purchase value of the stolen controlled substances was $2,679.60.

SECOND CAUSE FOR DISCIPLINE

(Violating State Laws Regulating Controlled Substances)

15. Respondent is subject to disciplinary action under section 4301, subdivision (j), for violating section 4051, subdivision (a), which provides that only licensed pharmacists may dispense or furnish dangerous drugs. Complainant refers to and incorporates all the allegations contained in paragraph 14, as though set forth fully.

16. Respondent is subject to disciplinary action under section 4301, subdivision (j), for violating section 4059, subdivision (a), which provides that it is unlawful to dispense or furnish

dangerous drugs without a valid prescription. Complainant refers to and incorporates all the allegations contained in paragraph 14, as though set forth fully.

17. Respondent is subject to disciplinary action under section 4301, subdivision (j), for violating section 4060, which provides that it is unlawful to possess any controlled substance without a valid prescription.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of a Controlled Substance)

18. Respondent is subject to disciplinary action under section 4301, subdivision (h), for using the controlled substance hydrocodone in a manner that was dangerous to herself and others. In a signed statement that Respondent provided to the Board on or about September 15, 2009, Respondent informed the Board, under penalty of perjury, that she was addicted to hydrocodone, and was stealing approximately 30 10-mg. tablets for self-use every few weeks.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty and/or Fraudulent Conduct)

19. Respondent is subject to disciplinary action under section 4301, subdivision (f), for engaging in dishonesty and/or fraudulent conduct.

a. Respondent engaged in repeated acts of dishonesty and fraudulent conduct when she stole 40 bottles of hydrocodone and one bottle of Viagra, together valued at $2,679.60, over a five-month period, from the CVS pharmacy where was employed.

b. Respondent engaged in further dishonesty when she gave two completely different versions of the underlying facts, which contradict each other and, therefore, cannot possibly both be true. Respondent informed the CVS Pharmacy Loss Prevention Manager and the Gardena Police Department that she was selling the stolen dangerous drugs to finance the defense of her incarcerated son, but she later informed the Board under penalty of perjury that she was taking the pills only for herself to feed her addiction to hydrocodone.

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FIFTH CAUSE FOR DISCIPLINE

(Committing Acts That Would Warrant the Denial of a License)

20. Respondent is subject to disciplinary action under section 4301, subdivision (p), in conjunction with section 480, subdivision (a)(1), in that Respondent's felony grand theft conviction would warrant the denial of an applicant's license. Complainant refers to and incorporates all the allegations contained in paragraph 14, as though set forth fully.

21. Respondent is subject to disciplinary action under section 4301, subdivision (p), in conjunction with section 480, subdivision (a)(2), in that Respondent's dishonesty and/or fraudulent acts would warrant the denial of an applicant's license. Complainant refers to and incorporates all the allegations contained in paragraph 19, including its subparagraphs, as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(Violating Provisions of the Business and Professions Code)

22. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that Respondent has violated numerous provisions of the Business and Professions Code. Complainant refers to and incorporates all the allegations contained in paragraphs 14 through 21, inclusive, as though set forth fully.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 4497, issued to Respondent;

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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/9/10

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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