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

In the Matter of the Petition to Revoke Probation Against: **DANNA MICHELLE SILVA** **1502 Mt. Diablo Avenue** **Milpitas, CA 95035** **Pharmacy Technician License No. TCH 8898** Respondent.	Case No. 3838 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 10, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 3838 against Danna Michelle Silva (Respondent) before the Board of Pharmacy. A copy of the Petition to Revoke Probation is attached as exhibit A.

2. On or about August 13, 1993, the Board of Pharmacy issued Pharmacy Technician License Number TCH 8898 to Danna Michelle Silva (Respondent). The Pharmacy Technician License expired on or about January 31, 2005 without renewal, and remained delinquent until on or about January 12, 2010, when it was renewed. The License remains current and active and will expire on January 31, 2011, unless renewed.

3. In a disciplinary action titled "In the Matter of Accusation against Danna Michelle Silva," Case No. 2577, the Board of Pharmacy issued a Decision and Order effective May 2, 2003 in which Respondent's License was revoked, with revocation stayed, probation with terms and conditions for three (3) years. A copy of the Decision and Order is attached as exhibit B.

4. On or about December 13, 2010, Respondent was served by Certified and First Class Mail with copies of: Petition to Revoke Probation No. 3838; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and Discovery Statutes (Gov. Code, §§ 11507.5, 11507.6, 11507.7) to Respondent's address of record, which was and is 1502 Mt. Diablo Avenue, Milpitas, CA 95035. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

5. Service of the Petition to Revoke Probation was effective under Government Code section 11505, subdivision (c) and/or Business and Professions Code section 124.

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Petition to Revoke Probation, and therefore waived her right to a hearing on the merits of Petition to Revoke Probation No. 3838.

8. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No. 3838, finds that the charges and allegations in Petition to Revoke Probation No. 3838, are separately and severally true and correct by clear and convincing evidence.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Danna Michelle Silva has subjected her Pharmacy Technician License No. TCH 8898 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations in the Petition to Revoke Probation supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. In violation of Term and Condition 4 of the probation imposed by the Decision and Order of the Board in Case No. 2577, Respondent failed to timely submit quarterly reports;

b. In violation of Term and Condition 9 of the probation ordered in Case No. 2577, Respondent failed to timely submit payment(s) for probation monitoring costs;

c. In violation of Term and Condition 10 of the probation ordered in Case No. 2577, Respondent failed to maintain current, active licensure with the Board;

d. In violation of Term and Condition 16 of the probation ordered in Case No. 2577, Respondent failed to timely submit to/cooperate with random drug screening; and

e. In violation of Term and Condition 6 of the probation ordered in Case No. 2577, Respondent failed to cooperate with Board staff ensuring her compliance with probation.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 8898, heretofore issued to Respondent Danna Michelle Silva, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 15, 2011.

It is so ORDERED March 16, 2011.

STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:SF2010202641

Attachments:
Exhibit A: Petition to Revoke Probation
Exhibit B: Decision and Order in Case No. 2577

Exhibit A

Petition to Revoke Probation

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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 Petition to Revoke Probation Against: **DANNA MICHELLE SILVA** **1502 Mt. Diablo Avenue** **Milpitas, CA 95035** **Pharmacy Technician License No. TCH 8898** Respondent.	Case No. 3838 **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs.

2. On or about August 13, 1993, the Board of Pharmacy issued Pharmacy Technician License Number TCH 8898 to Danna Michelle Silva (Respondent). The Pharmacy Technician License expired on or about January 31, 2005 without renewal, and remained delinquent until on or about January 12, 2010, when it was renewed. The License remains current and active and will expire on January 31, 2011, unless renewed.

3. In a disciplinary action titled "In the Matter of Accusation Against Danna Michelle Silva," Case No. 2577, the Board of Pharmacy issued a decision effective May 2, 2003 in which Respondent's License was revoked, with revocation stayed, probation with terms and conditions for three (3) years. A copy of the decision is attached as Exhibit A and incorporated by reference.

JURISDICTION AND STATUTORY PROVISIONS

4. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, 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. Section 4402(e) of the Code provides that any non-pharmacist license issued by the Board may be canceled if not renewed within 60 days after expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Timely Submit Quarterly Report(s))

8. At all times after the effective date (May 2, 2003) of the Decision and Order imposing probation on Respondent's License, Term and Condition 4 of that Order required that Respondent report to the Board quarterly, on a schedule as directed by the Board or its designee, either in person or in writing, as directed. No quarterly report was submitted to the Board by Respondent in 2003, 2004, 2005, 2006, 2007, 2008, or 2009, despite transmission by Board staff of one or more non-compliance letter(s) documenting Respondent's failure to submit. The first and only quarterly report submitted by Respondent was received on or about February 2, 2010. This failure to timely submit quarterly report(s) subjects Respondent's License to revocation.

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SECOND CAUSE TO REVOKE PROBATION

(Failure to Timely Submit Payment for Probation Monitoring Cost(s))

9. At all times after the effective date (May 2, 2003) of the Decision and Order imposing probation on Respondent's License, Term and Condition 9 of that Order required that Respondent pay the costs associated with probation monitoring as determined by the Board each and every year of probation. No payment for probation monitoring costs was ever submitted to the Board by Respondent, despite transmission by Board staff of one or more non-compliance letter(s) documenting Respondent's failure to submit. This failure to timely submit payment of probation monitoring costs subjects Respondent's License to revocation.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Maintain Active Pharmacy Technician License)

10. At all times after the effective date (May 2, 2003) of the Decision and Order imposing probation on Respondent's License, Term and Condition 10 of that Order required that at all times while on probation Respondent maintain an active, current Pharmacy Technician License with the Board. On or about January 31, 2005, Respondent's license expired without renewal, rendering it delinquent and inactive, and was not renewed or reactivated until January 12, 2010. This failure to maintain active, current licensure subject(s) Respondent's License to revocation.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Submit to/Cooperate With Random Drug Screening)

11. At all times after the effective date (May 2, 2003) of the Decision and Order imposing probation on Respondent's License, Term and Condition 16 of that Order required Respondent to participate at her own expense in random drug screening/testing, as directed by the Board or its designee, and required that she fully cooperate with the Board or its designee in doing so. At no time after the effective date did Respondent enroll in the Board-approved drug testing program, nor has she submitted to drug testing/screening as required. This failure to participate in drug testing/screening as directed, and/or to cooperate, subject Respondent's License to revocation.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Cooperate with Board Staff)

12. At all times after the effective date (May 2, 2003) of the Decision and Order imposing probation on Respondent's License, Term and Condition 6 of that Order required that Respondent cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with probation.. The failure(s) to cooperate with Board staff, as described in paragraphs 8-11 above, subject Respondent's License to revocation.

OTHER MATTERS – EXTENSION OF PROBATION

13. At all times after the effective date (May 2, 2003) of the Decision and Order imposing probation on Respondent's License, Term and Condition 13 of that Order required:

> **13. Violation of Probation.**
> If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.
> If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

14. Pursuant to the operation of Term and Condition 13 of the probation order applicable to Respondent's License, probation is automatically extended by the filing hereof, and/or by Respondent's failure to comply with the terms and conditions of probation, until such time as this Petition to Revoke Probation is heard and decided, or until the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation.

PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2577 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician License No. TCH 8898, issued to Danna Michelle Silva;

2. Revoking or suspending Pharmacy Technician License No. TCH 8898, issued to Danna Michelle Silva;

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

DATED: 12/10/10

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

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Exhibit B

Decision and Order in Case No. 2577

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

In the Matter of the Accusation Against: DANNA MICHELLE SILVA 1502 Mt. Diablo Avenue Milpitas, CA 95035 Pharmacy Technician Registration No. TCH 8898 Respondent.	Case No. 2577 OAH No. N2002100475

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 May 2, 2003.

It is so ORDERED April 3, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
JOHN D. JONES
Board President

BILL LOCKYER, Attorney General
of the State of California
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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: DANNA MICHELLE SILVA 1502 Mt. Diablo Avenue Milpitas, CA 95035 Pharmacy Technician Registration No. TCH 8898 Respondent.	Case No. 2577 OAH No. N2002100475 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Patricia F. Harris (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 Bill Lockyer, Attorney General of the State of California, by Robert R. Reyff, Deputy Attorney General.

2. DANNA MICHELLE SILVA (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about August 13, 1993, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 8898 to DANNA MICHELLE SILVA (Respondent). The

Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 2577 and will expire on January 31, 2003, unless renewed.

JURISDICTION

4. Accusation No. 2577 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 August 22, 2002. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2577 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2577. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary 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 admits the truth of each and every charge and allegation in Accusation No. 2577.

9. Respondent agrees that her Pharmacy Technician Registration is subject to discipline and she agrees to be bound by the Board of Pharmacy (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

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CIRCUMSTANCES IN MITIGATION

10. Respondent DANNA MICHELLE SILVA has never been the subject of any disciplinary action. She is admitting responsibility at an early stage in the proceedings.

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 settlement, without notice to or participation by Respondent. 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 Settlement 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 Settlement and Disciplinary 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 8898 issued to Respondent DANNA MICHELLE SILVA is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** License number TCH 8898, issued to Respondent DANNA MICHELLE SILVA is suspended for a period of 30 days.

2. **Certification Prior to Resuming Work.** Respondent shall be suspended

from working as a pharmacy technician until she is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any entity licensed by the Board in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

3. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

4. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

5. **Interview with the Board.** Upon receipt of reasonable notice, Respondent shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

6. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of her probation. Failure to comply shall be considered a violation of probation.

7. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2577 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause her employer to report to the Board in writing acknowledging the employer has read the decision in case number 2577.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the decision in case number 2577 in advance of the Respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether the Respondent is considered an employee or independent contractor.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $3,000.00. Respondent shall make said payments as follows: monthly payments, payments to be set for $100.00 per month, payable by the 15th of each and every month, beginning the 15th of the month following the Board's adoption of this stipulation, and continuing thereafter until fully paid.

The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

9. **Probation Monitoring Costs.** Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

10. **Status of License.** Respondent shall, at all times while on probation, maintain an active current technician registration/certification with the Board, including any period during which suspension or probation is tolled.

If Respondent's technician registration/certification expires or is canceled by operation of law or

otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule, if known. Respondent shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

12. **No Access to Controlled Substances.** Respondent shall not order, possess, dispense or otherwise have access to any controlled substance(s) in Schedule II, III, IV or V (Health and Safety Code sections 11055-11058 inclusive). Respondent shall not order, receive or retain any triplicate prescription forms.

13. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

14. **Completion of Probation.** Upon successful completion of probation, Respondent's technician registration will be fully restored.

15. **License Surrender While on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her license to the Board for surrender. The Board shall have the discretion whether to grant the

request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish her pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

16. **Random Drug Screening.** Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), Breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: Feb. 6, 2015.

Danna M. Silva

DANNA MICHELLE SILVA
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: February 6, 2003

BILL LOCKYER, Attorney General
of the State of California

ROBERT R. REYFF
Deputy Attorney General
Attorneys for Complainant

DOJ Docket Number: 03583110-SF2002AD0746
gj 2/5/03

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

In the Matter of the Accusation Against: DANNA M. SILVA 1502 Mt. Diablo Avenue Milpitas, CA 95035 Pharmacy Technician License No. TCH 8898 Respondent.	Case No. 2577 ACCUSATION

Complainant alleges:

PARTIES

1. Patricia F. Harris (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 August 13, 1993, the Board of Pharmacy issued Pharmacy Technician License Number TCH 8898 to DANNA M. SILVA (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2003, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 4300 of the Code provides in pertinent part that every license issued

may be suspended or revoked.

5. Section 4301 of the Code states:

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

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

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

(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."

6. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, 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."

7. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to section 2746.51, a nurse practitioner pursuant to section 2836.1, or a physician assistant pursuant to section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices."

8. Health & Safety Code section 11170 provides in pertinent part that no person shall prescribe, administer or furnish a controlled substance for himself or herself.

9. Health & Safety Code section 11173 (a) provides in pertinent part that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, by, fraud, deceit, misrepresentation or subterfuge or by the concealment of a material fact.

10. Health and Safety Code section 11350(a) provides in pertinent part that, it is unlawful to possess a controlled substance unless upon the legitimate and lawful written prescription of a licensed physician, dentist, podiatrist or veterinarian.

11. Health and Safety Code section 11352(a) provides in pertinent part that, it is unlawful to transport, import into the state, sell, furnish, administer, or give away, or offer to transport, import into the state, sell, furnish, administer, or give away, any controlled substance specified in subdivision (b) or (c) of section 11055 or classified in Schedule III, IV, or V which is a narcotic drug.

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

DRUGS

13. Lorcet, a trade name for hydrocodone bitartrate and acetaminophen, is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e) and a dangerous drug within the meaning of Code section 4022.

14. Vicodin and Vicodin ES are trade names for a chemical compound of hydrocodone and acetaminophen, is a Schedule III controlled substance as defined by Health and Safety Code section 11056(e) and a dangerous drug within the meaning of Code section 4022.

FIRST CAUSE FOR DISCIPLINE
(Moral Turpitude, Dishonesty, Fraud)
(Bus. & Prof. Code §4301(f))

15. On or about May 21, 2001, while employed as a pharmacy technician at the Community Hospital of Los Gatos in Santa Clara County, California, respondent unlawfully obtained and possessed a controlled substance by diversion from the pharmacy supply. The circumstances are hereinafter set forth. On the aforementioned date, respondent falsely informed a staff pharmacist that she had received a verbal request to refill a nursing station's supply of Vicodin and Vicodin ES. Respondent removed said controlled substances from the pharmacy. Thereafter, respondent falsely signed the name of another person on a narcotic requisition form, thereby indicating that she had delivered Vicodin and Vicodin ES to the hospital intensive care unit, when in truth and in fact she had not delivered said controlled substances but had placed them in her lab jacket, which she produced upon demand from a staff pharmacist.

16. Respondent's conduct, as set forth in paragraphs 15, above, constitutes unprofessional conduct within the meaning of Code section 4301(f).

SECOND CAUSE FOR DISCIPLINE
(Forgery of Requisition Form)
(Bus. & Prof. Code § 4301(g))

17. Complainant realleges the allegations in paragraph 15, above and incorporates therein by reference as if fully set forth at this point.

18. Respondent's conduct as set forth in paragraph 15, above, constitutes a violation of Code section 4301(g).

THIRD CAUSE FOR DISCIPLINE
(Violation of Drug Statutes)
(Bus. & Prof. Code § 4301(j))

19. Complainant realleges the allegations in paragraph 15, above and incorporates therein by reference as if fully set forth at this point.

20. Respondent's conduct as set forth in paragraph 15, above, constitutes a violation of Code section 4301(j).

PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 8898, issued to DANNA M. SILVA;

2. Ordering DANNA M. SILVA to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 7/31/02

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

RRR:tg

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