

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

In the Matter of the Accusation Against:

Case No. 3896

**KENNETH KYLE CLAUSEN**  
16330 Victoria Drive  
Victorville, CA 92394

**Pharmacy Technician Registration No.**  
**TCH 94452**

Respondent.

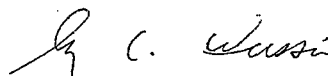
**DECISION AND ORDER**

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 March 16, 2012.

It is so ORDERED on February 15, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
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7

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**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

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13 Victorville, CA 92394  
14 **Pharmacy Technician Registration No. TCH**  
**94452**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 Respondent.  
16

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

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
21 She brought this action solely in her official capacity and is represented in this matter by Kamala  
22 D. Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney  
23 General.

24 2. Kenneth Kyle Clausen (Respondent) is representing himself in this proceeding and  
25 has chosen not to exercise his right to be represented by counsel.

26 3. On or about April 20, 2010, the Board of Pharmacy issued Pharmacy Technician  
27 Registration No. TCH 94452 to Kenneth Kyle Clausen (Respondent). The Pharmacy Technician  
28

1 Registration was in full force and effect at all times relevant to the charges brought in Accusation  
2 No. 3896 and will expire on November 30, 2011, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 3896 was filed before the Board of Pharmacy (Board), Department of  
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
6 statutorily required documents were properly served on Respondent on June 30, 2011.

7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation  
8 No. 3896 is attached as Exhibit A and incorporated by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in  
11 Accusation No. 3896. Respondent also has carefully read, and understands the effects of this  
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at  
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
17 the attendance of witnesses and the production of documents; the right to reconsideration and  
18 court review of an adverse decision; and all other rights accorded by the California  
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
21 every right set forth above.

22 **CULPABILITY**

23 8. Respondent admits the truth of each and every charge and allegation in Accusation  
24 No. 3896, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician  
25 Registration No. TCH 94452 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue  
27 an order accepting the surrender of his Pharmacy Technician Registration without further process.

28 ///

1 CONTINGENCY

2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
4 communicate directly with the Board regarding this stipulation and surrender, without notice to or  
5 participation by Respondent. By signing the stipulation, Respondent understands and agrees that  
6 she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board  
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
8 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
10 be disqualified from further action by having considered this matter.

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

14 12. This Stipulated Surrender of License and Order is intended by the parties to be an  
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
17 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order  
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing  
19 executed by an authorized representative of each of the parties.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

22 ORDER

23 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 94452, issued  
24 to Respondent Kenneth Kyle Clausen, is surrendered and accepted by the Board of Pharmacy.

25 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance  
26 of the surrendered license by the Board shall constitute the imposition of discipline against  
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
28 Respondent's license history with the Board of Pharmacy.

1           2.     Respondent shall lose all rights and privileges as a pharmacy technician in California  
2 as of the effective date of the Board's Decision and Order.

3           3.     Respondent shall cause to be delivered to the Board his pocket license and, if one was  
4 issued, his wall certificate within ten (10) days of the effective date of the Decision and Order.

5           4.     Respondent understands and agrees that if he ever files an application for licensure or  
6 a petition for reinstatement in the State of California, the Board shall treat it as a new application  
7 for licensure.

8           5.     Respondent may not apply for any license, permit, or registration from the Board for  
9 three (3) years from the effective date of this decision. Respondent stipulates that should he apply  
10 for any license from the Board on or after the effective date of this decision, all allegations set  
11 forth in the accusation shall be deemed to be true, correct and admitted by respondent when the  
12 Board determines whether to grant or deny the application. Respondent shall satisfy all  
13 requirements applicable to that license as of the date the application is submitted to the Board,  
14 including, but not limited to certification by a nationally recognized body prior to the issuance of  
15 a new license. Respondent is required to report this surrender as disciplinary action.

16          6.     Respondent stipulates that should he apply for any license from the Board on or after  
17 the effective date of this decision, investigation and prosecution costs in the amount of \$2,247.50  
18 shall be paid to the Board prior to issuance of the license. Respondent shall be permitted to pay  
19 these costs in a payment plan approved by the Board.

20          7.     If Respondent should ever apply or reapply for a new license or certification, or  
21 petition for reinstatement of a license, by any other health care licensing agency in the State of  
22 California, all of the charges and allegations contained in Accusation, No. 3896 shall be deemed  
23 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any  
24 other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. 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: 11/29/11



KENNETH KYLE CLAUSEN  
Respondent

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: ~~November 27, 2011~~  
12/5/11

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
KAREN B. CHAPPELLE  
Supervising Deputy Attorney General



WILLIAM D. GARDNER  
Deputy Attorney General  
*Attorneys for Complainant*

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**EXHIBIT A**

**Accusation  
(Case No.3896)**

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 RANDY M. MAILMAN  
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*Attorneys for Complainant*  
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11 **KENNETH KYLE CLAUSEN**  
12 **16330 Victoria Drive**  
13 **Victorville, CA 92394**  
14 **Pharmacy Technician Registration No. TCH**  
15 **94452**  
Respondent.

Case No. 3896

**ACCUSATION**

16  
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about April 20, 2010, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 94452 to Kenneth Kyle Clausen (Respondent). The Pharmacy  
23 Technician Registration number was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on November 30, 2011, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code unless otherwise indicated.



STATUTORY PROVISIONS

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2       4. Section 118(b) of the Code states:

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

10       5. Section 4300(a) of the Code states that "[e]very license issued may be suspended or  
11 revoked."

12       6. Section 4301(j) of the Code states:

13           "The board shall take action against any holder of a license who is guilty of unprofessional  
14 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
15 Unprofessional conduct shall include, [...] [t]he violation of any of the statutes of this state, or  
16 any other state, or of the United States regulating controlled substances and dangerous drugs."

17       7. Section 4060 of the Code states:

18           "No person shall possess any controlled substance, except that furnished to a person upon  
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
21 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
22 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
23 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
25 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
26 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
27 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
28 labeled with the name and address of the supplier or producer.

**DRUG STATUTES**

1  
2       8.     Section 11350(a) of the California Health and Safety Code states:

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

11       9.     Section 11351 of the California Health and Safety Code states:

12           “Except as otherwise provided in this division, every person who possesses for sale or  
13 purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e)  
14 of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054,  
15 or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
16 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
17 drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal  
18 Code for two, three, or four years.”

19       10.    Section 11357(c) of the California Health and Safety Code states:

20           “Except as authorized by law, every person who possesses more than 28.5 grams of  
21 marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail  
22 for a period of not more than six months or by a fine of not more than five hundred dollars  
23 (\$500), or by both such fine and imprisonment.”

**COST RECOVERY**

24  
25       11.    Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
26 administrative law judge to direct a licentiate found to have committed a violation or violations of  
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
28 enforcement of the case.

**CONTROLLED SUBSTANCES/ DANGEROUS DRUGS**

12. Marijuana (Cannabis) is a Schedule I controlled substance as defined in Health and Safety Code section 11054(d)(13), and is categorized as a controlled substance according to section 4021.

13. OxyContin, a brand name formation of oxycodone hydrochloride, is a Schedule II controlled substance as defined in Health and Safety Code section 11055(b)(1)(M), and is categorized as a dangerous drug pursuant to section 4022.

**FIRST CAUSE FOR DISCIPLINE**

**(Possession of Controlled Substances)**

14. Respondent is subject to disciplinary action under sections 4060, 4300, and 4301(j) of the Code, for possessing the controlled substances marijuana and OxyContin, thereby violating section 11350(a) of the Health and Safety Code.

15. On or about May 21, 2010, an officer with the Fontana Police Department witnessed Respondent exchange a pill bottle with a male subject sitting in a parked car in a Racho Cucamonga commercial complex parking lot. The officer detained Respondent at the scene.

16. Respondent admitted that he had sold 40 pills of OxyContin worth \$1070 to the male subject. Respondent does not have a prescription for OxyContin.

17. Respondent admitted to having marijuana in his possession. Respondent does not have a prescription for marijuana and obtained the marijuana from an unnamed male subject in Victorville for selling the OxyContin.

**SECOND CAUSE FOR DISCIPLINE**

**(Illegal Sale of a Dangerous Drug)**

18. Respondent is subject to disciplinary action under sections 4060, 4300, and 4301(j) of the Code, for possessing the controlled substance OxyContin for sale, and thereby violating section 11351 of the Health and Safety Code.

19. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 and 16, inclusive, as though set forth fully.

1 THIRD CAUSE FOR DISCIPLINE

2 (Possession of a Controlled Substance)

3 20. Respondent is subject to disciplinary action under sections 4060, 4300, and 4301(j) of  
4 the Code, for possessing more than 28.5 grams of the controlled substance marijuana, thereby  
5 violating section 11357(c) of the Health and Safety Code.

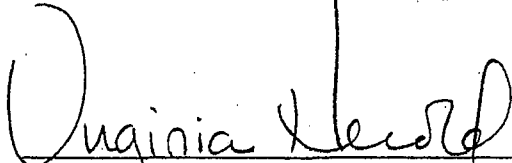
6 21. On or about November 9, 2009, a California Highway Patrol officer made a traffic  
7 stop on a car in which Respondent was a passenger. The officer noticed the odor of marijuana in  
8 the car and asked those in the vehicle about the presence of marijuana. Respondent admitted he  
9 had marijuana in his possession without a valid prescription. The officer retrieved 36.2 grams of  
10 marijuana in gross weight from Respondent.

11 PRAYER FOR RELIEF

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 94452,  
15 issued to Kenneth Kyle Clausen;
- 16 2. Ordering Kenneth Kyle Clausen to pay the Board the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to section 125.3 of the Code;
- 18 3. Taking such other and further action as deemed necessary and proper.

19  
20  
21 DATED: 6/21/11

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

25 LA2011600240  
26 6/1/2011  
27 accusation.rtf