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

In	the	Matter	of '	the	Accusation	Against:
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Case No. 4013

BRIAN MICHAEL BATTS

4341 Opal Avenue Cypress, CA 90630

Pharmacy Technician Registration No. TCH 84719

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 September 21, 2011.

It is so ORDERED August 22, 2011.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

STANLEY C. WEISSER Board President

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1	Kamala D. Harris					
2	Attorney General of California LINDA K. SCHNEIDER					
3	Supervising Deputy Attorney General State Bar No. 101336					
4	AMANDA DODDS Senior Legal Analyst					
5	110 West "A" Street, Suite 1100					
	San Diego, CA 92101 P.O. Box 85266					
6	San Diego, CA 92186-5266 Telephone: (619) 645-2141 Facsimile: (619) 645-2061					
7	Facsimile: (619) 645-2061 Attorneys for Complainant					
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9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA					
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11						
12	In the Matter of the Accusation Against:	Case No. 4013				
13	BRIAN MICHAEL BATTS	STIPULATED SURRENDER OF LICENSE AND ORDER				
14	4341 Opal Avenue Cypress, CA 90630	LICENSE AND ORDER				
15	Pharmacy Technician Registration No. TCH 84719					
16						
17	Respondent.					
18	·					
19	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this					
20	proceeding that the following matters are true:					
21	PARTIES					
22	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.					
23	She brought this action solely in her official capacity and is represented in this matter by Kamala					
24	D. Harris, Attorney General of the State of California, by Amanda Dodds, Senior Legal Analyst					
25	2. Brian Michael Batts (Respondent) is representing himself in this proceeding and has					
26	chosen not to exercise his right to be represented by counsel.					
27	3. On or about March 11, 2010, the Board of Pharmacy issued Pharmacy Technician					
28	Registration No. TCH 84719 to Brian Michael Batts (Respondent). The Pharmacy Technician					
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Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4013 and will expire on October 31, 2011, unless renewed.

JURISDICTION

4. Accusation No. 4013 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 June 10, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 4013 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 4013. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 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. 4013, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH 84719 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

CONTINGENCY

- 10. 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. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 11. 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.
- 12. 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.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 84719, issued to Respondent Brian Michael Batts, is surrendered and accepted by the Board of Pharmacy.

1. 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.

- 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. Respondent understands and agrees that if he 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 apply for any license from the Board on or after the effective date of this decision, all allegations set forth in Accusation No. 4013 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.
- 5. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, investigation and prosecution costs in the amount of \$642.50 shall be paid to the Board prior to issuance of the license.

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: 701 2011 BRIAN MICHAEL Respondent

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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. Respectfully submitted, KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General AMANDA DODDS Senior Legal Analyst Attorneys for Complainant SD2011800153 80516823.doc

Exhibit A

Accusation No. 4013

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1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General State Bar No. 101336 AMANDA DODDS Senior Legal Analyst 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2141 Facsimile: (619) 645-2061 Attorneys for Complainant						
9	BEFO	RE THE					
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS						
-11		CALIFORNIA					
12	In the Matter of the Accusation Against:	Case No. 4013					
13	BRIAN MICHAEL BATTS	ACCUSATION					
14	4341 Opal Avenue Cypress, CA 90630	·					
15	Pharmacy Technician Registration No. TCH 84719						
16							
17	Respondent.						
18							
19	Complainant alleges:						
20	PARTIES						
21	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity						
22	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.						
23	2. On or about March 11, 2010, the Board of Pharmacy issued Pharmacy Technician						
24	Registration Number TCH 84719 to Brian Michael Batts (Respondent). The Pharmacy						
25	Technician Registration was in full force and effect at all times relevant to the charges brought						
26	herein and will expire on October 31, 2011, unless renewed.						
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28	111.						
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JURISDICTION

- 3. This Accusation 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 (Code) unless otherwise indicated.
- 4. Section 118, subdivision (b), of the Code provides 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.
- 5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

- 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
 - Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) Evidence, if any, of rehabilitation submitted by the licensee.
- 11. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COSTS

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

FIRST CAUSE FOR DISCIPLINE

(November 1, 2010 Criminal Convictions for Grand Theft, Identity Theft & Acts Constituting Forgery)

- 13. Respondent has subjected his registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:
- a. On or about November 1, 2010, in a criminal proceeding entitled *People of the State of California v. Brain Michael Batts*, in Orange County Superior Court, case number 10WF1886, Respondent was convicted on his plea of guilty to one count of grand theft (Pen. Code, § 487(a)); four counts of acts constituting forgery (Pen. Code, § 470(d)); and three counts of unauthorized use of personal identifying information (Pen. Code, § 530.5(a)). The remaining seven counts were dismissed pursuant to a plea agreement. All counts were charged as felonies, but reduced to misdemeanors as a result of a plea agreement.

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- b. As a result of the convictions, on or about November 1, 2010, as to all seven counts, Respondent was granted two years informal probation, and ordered to serve 30 days in the custody of the sheriff performing Cal Trans/Physical Labor, pay fines, fees, and restitution, submit to a Fourth Amendment Waiver, and comply with the terms of probation.
- c. The facts that led to the conviction were that on or about the morning of April 23, 2010, a business owner contacted the Cypress Police Department stating he was a victim of forgery and had a possible suspect. The victim provided the officer with copies of two checks that appeared similar to the victim's checks, written by Respondent and payable to a credit collection agency, in the total amount of \$173.27. There were also two unauthorized online payments from the victim's account to two businesses in the total amount of \$233.49. The officer contacted Respondent at his residence. Respondent denied knowing anything about the forged checks and submitted to a search of his room. The officer found several self-help books on how to prevent being arrested and how to beat the police, but nothing that indicated he was involved in criminal activity. As part of the ongoing investigation, detectives contacted the various entities who had received payments from Respondent using identity theft and forgery. They discovered that Respondent had used a second victim's identity and bank account information to make two payments to a credit collection agency in the total amount of \$173.27. A warrant was issued and Respondent was arrested at his residence on August 27, 2010.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Commission of Fraudulent Acts)

14. Respondent has subjected his registration to discipline under section 4301, subdivision (f) of the Code for unprofessional conduct in that Respondent committed multiple acts of dishonesty, fraud, and deceit. In Respondent's plea agreement dated November 1, 2010, as detailed in paragraph 13, above, Respondent stated: "... between the dates of March 18, 2010 and April 21, 2010, [Respondent] used the personal identifying information of Victor R and Assaf F to purchase various items using their bank information thereby committing the indicated crimes of forgery, grand theft & identification theft."

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 Registration Number TCH 84719, issued to Brian Michael Batts;
- 2. Ordering Brian Michael Batts to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: <u>6/2/11</u>

VIRGINIA HEROLD

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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