

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

In the Matter of the Accusation Against:

DANIEL MICHAEL CLAUSER
582 San Miguel Court
Pleasanton, CA 94566

Pharmacy Technician Registration No.
TCH 41450

Respondent.

Case No. 5015

OAH Number 2014050702

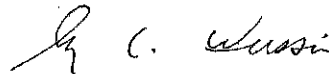
DECISION AND ORDER

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 13, 2014.

It is so ORDERED on October 8, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **DANIEL MICHAEL CLAUSER**
582 San Miguel Court
Pleasanton, California 94566

14 Pharmacy Technician Registration Number
15 TCH 41450,

16 Respondent.

Case Number 5015
OAH Number 2014050702

17 **STIPULATED SURRENDER OF**
18 **LICENSE AND ORDER**

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

21 **PARTIES**

22 1. Complainant Virginia Herold is the Executive Officer of the Board of Pharmacy
23 (Board), Department of Consumer Affairs. She brought this action solely in her official capacity
24 and is represented in this matter by Kamala D. Harris, Attorney General of the State of California,
and by Gregory Tuss, Deputy Attorney General.

25 2. Respondent Daniel Michael Clauser is representing himself in this proceeding and
26 has chosen not to exercise his right to be represented by counsel.

27 3. On or about April 5, 2002, the Board issued Pharmacy Technician Registration
28 Number TCH 41450 to respondent. This pharmacy technician registration was in full force and

1 effect at all times relevant to the charges brought in Accusation Number 5015 and will expire on
2 July 31, 2015, unless renewed.

3 **JURISDICTION**

4 4. Accusation Number 5015 was filed before the Board and is currently pending
5 against respondent. The accusation and all other statutorily required documents were properly
6 served on respondent on April 22, 2014. Respondent timely filed his notice of defense contesting
7 the accusation. A copy of Accusation Number 5015 is attached as exhibit 1 and incorporated by
8 reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation Number 5015. 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 understands and agrees that the facts, charges, and allegations in
24 paragraphs 12-21 of Accusation No. 5015, if proven at hearing, constitute cause for imposing
25 discipline upon his Pharmacy Technician License, TCH 41450. Respondent also admits the truth
26 of the facts, charges, and allegations in paragraphs 22-33 of Accusation Number 5015, and agrees
27 that cause exists for discipline based on the facts, charges, and allegations in paragraphs 22-33 in
28 Accusation Number 5015. Respondent consequently surrenders his Pharmacy Technician

1 Registration Number TCH 41450 for the Board's formal acceptance.

2 9. Respondent understands that by signing this stipulation he enables the Board to
3 issue an order accepting the surrender of his pharmacy technician registration without further
4 process.

5 **CONTINGENCY**

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

15 11. The parties understand and agree that Portable Document Format (PDF) and
16 facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile
17 signatures, shall have the same force and effect as the originals.

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

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

26 **ORDER**

27 IT IS ORDERED that Pharmacy Technician Registration Number TCH 41450 issued to
28 respondent Daniel Michael Clauser is surrendered and accepted by the Board of Pharmacy.

1 1. The surrender of respondent's pharmacy technician registration and the acceptance
2 of the surrendered license by the Board shall constitute the imposition of discipline against
3 respondent. This stipulation constitutes a record of the discipline and shall become a part of
4 respondent's license history with the Board.

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

7 3. Respondent shall cause to be delivered to the Board his pocket license and, if one
8 was issued, his wall certificate on or before the effective date of the Decision and Order.

9 4. If respondent ever files an application for licensure or a petition for reinstatement
10 in the State of California, the Board shall treat it as a new application for licensure. Respondent
11 must comply with all the laws, regulations and procedures for reinstatement of a revoked license
12 in effect at the time the petition is filed, and all of the charges and allegations contained in
13 Accusation Number 5015 shall be deemed to be true, correct and admitted by respondent when
14 the Board determines whether to grant or deny the petition.

15 5. Respondent shall pay the agency its costs of investigation and enforcement in the
16 amount of \$4,290.00 prior to issuance of a new or reinstated license.

17 6. If respondent should ever apply or reapply for a new license or certification, or
18 petition for reinstatement of a license, by any other health care licensing agency in the State of
19 California, all of the charges and allegations contained in Accusation Number 5015 shall be
20 deemed to be true, correct, and admitted by respondent for the purpose of any statement of issues
21 or any other proceeding seeking to deny or restrict licensure.

22 7. Respondent may not apply for any license, permit, or registration from the Board
23 for three (3) years from the effective date of this decision. Respondent stipulates that should he
24 apply for any license from the board on or after the effective date of this decision, all allegations
25 set forth in the accusation shall be deemed to be true, correct and admitted by respondent when
26 the Board determines whether to grant or deny the application. Respondent shall satisfy all
27 requirements applicable to that license as of the date the application is submitted to the board,
28 including, but not limited to certification by a nationally recognized body prior to the issuance of

1 a new license. Respondent is required to report this surrender as disciplinary action.

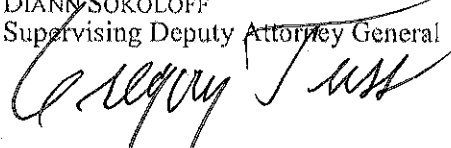
2 ACCEPTANCE

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

7 DATED: 9/10/2014 
8 DANIEL MICHAEL CLAUSER
9 Respondent

9 ENDORSEMENT

10 This Stipulated Surrender of License and Order is respectfully submitted for consideration
11 by the Board of Pharmacy of the Department of Consumer Affairs.

12 Dated: 9.11.14 Respectfully submitted,
13
14 KAMALA D. HARRIS
15 Attorney General of California
16 DIANN SOKOLOFF
17 Supervising Deputy Attorney General
18 
19 GREGORY TUSS
20 Deputy Attorney General
21 Attorneys for Complainant

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Exhibit 1

Accusation Number 5015

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
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11 In the Matter of the Accusation Against:

Case Number 5015

12 **DANIEL MICHAEL CLAUSER**
13 **582 San Miguel Court**
Pleasanton, California 94566

A C C U S A T I O N

14 **Pharmacy Technician Registration Number**
15 **TCH 41450,**

16 Respondent.

17
18 Complainant Virginia Herold alleges:

19 **PARTIES**

20 1. Complainant brings this accusation solely in her official capacity as the Executive
21 Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

22 2. On or about April 5, 2002, the Board issued Pharmacy Technician Registration
23 Number TCH 41450 to respondent Daniel Michael Clauser. This pharmacy technician
24 registration was in full force and effect at all times relevant to the charges brought in this
25 accusation and will expire on July 31, 2015, unless renewed.

26 **JURISDICTION**

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

1 4. Section 4011 states:

2 "The board shall administer and enforce this chapter and the Uniform Controlled
3 Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

4 5. Section 4300 states in part:

5 "(a) Every license issued may be suspended or revoked.

6 "(b) The board shall discipline the holder of any license issued by the board, whose default
7 has been entered or whose case has been heard by the board and found guilty, by any of the
8 following methods:

9 "(1) Suspending judgment.

10 "(2) Placing him or her upon probation.

11 "(3) Suspending his or her right to practice for a period not exceeding one year.

12 "(4) Revoking his or her license.

13 "(5) Taking any other action in relation to disciplining him or her as the board in its
14 discretion may deem proper."

15 6. Section 4300.1 states:

16 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
17 operation of law or by order or decision of the board or a court of law, the placement of a license
18 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
19 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
20 proceeding against, the licensee or to render a decision suspending or revoking the license."

21 **STATUTORY AND REGULATORY AUTHORITY**

22 7. Section 490, subdivision (a), states:

23 "In addition to any other action that a board is permitted to take against a licensee, a board
24 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
25 the crime is substantially related to the qualifications, functions, or duties of the business or
26 profession for which the license was issued."

27 ///

28

1 16. Respondent was arrested and charged with possession or use of marijuana, a class 1
2 misdemeanor (Ariz. Rev. Stat. § 13-3405);¹ and two counts of possession of drug paraphernalia,
3 reduced to class 1 misdemeanors (Ariz. Rev. Stat. § 13-3415).²

4 17. On June 8, 2009, in the Prescott Justice Court, Yavapai County State of Arizona,
5 Case Number 2009011010J, entitled *State of Arizona v. Daniel Michael Clauser*, the court

6
7 ¹ Arizona Revised Statutes section 13-3405 states in part:

8 “A. A person shall not knowingly:

9 “1. Possess or use marijuana.”

10 ² Arizona Revised Statutes section 13-3415 states in part:

11 “A. It is unlawful for any person to use, or to possess with intent to use, drug
12 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,
13 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale
or otherwise introduce into the human body a drug in violation of this chapter. Any person who
violates this subsection is guilty of a class 6 felony.

14 ...

15 “F. In this section, unless the context otherwise requires:

16 ...

17 “2. ‘Drug paraphernalia’ means all equipment, products and materials of any kind which
18 are used, intended for use or designed for use in planting, propagating, cultivating, growing,
19 harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing,
analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling
or otherwise introducing into the human body a drug in violation of this chapter. It includes:

20 ...

21 “(i) Capsules, balloons, envelopes and other containers used, intended for use or designed
for use in packaging small quantities of drugs.

22 “(j) Containers and other objects used, intended for use or designed for use in storing or
23 concealing drugs.

24 ...

25 “(l) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise
26 introducing marijuana, a narcotic drug, a dangerous drug, hashish or hashish oil into the human
body, such as:

27 “(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens,
permanent screens, hashish heads or punctured metal bowls.”

28

1 dismissed all charges against respondent after he had completed a drug education and counseling
2 program.

3 **FIRST CAUSE FOR DISCIPLINE**
4 **Business and Professions Code section 4301, subdivision (h)**
5 **Unprofessional Conduct – Use of Alcoholic Beverages and Dangerous Drugs in a Manner**
6 **Dangerous or Injurious to Self or Public**

7 18. The allegations of paragraphs 12-17 are realleged and incorporated by reference as if
8 fully set forth.

9 19. Respondent has subjected his pharmacy technician registration to disciplinary action
10 for the unprofessional conduct of using alcoholic beverages and dangerous drugs in a manner
11 dangerous or injurious to himself or the public (Bus. & Prof. Code, § 4301, subd. (h)). As set
12 forth in paragraphs 12-17 above, respondent rolled a vehicle on a highway after drinking and
13 smoking marijuana.

14 **SECOND CAUSE FOR DISCIPLINE**
15 **Business and Professions Code section 4301, subdivision (j)**
16 **Unprofessional Conduct – Violation of Statutes Regulating Controlled Substances and**
17 **Dangerous Drugs**

18 20. The allegations of paragraphs 12-17 are realleged and incorporated by reference as if
19 fully set forth.

20 21. Respondent has subjected his pharmacy technician registration to disciplinary action
21 for the unprofessional conduct of violating statutes regulating controlled substances and dangerous
22 drugs (Bus. & Prof. Code, § 4301, subd. (j)). As set forth in paragraphs 12-17 above, respondent
23 possessed marijuana and drug paraphernalia in violation of Arizona statutes.

24 **2012 ARREST AND CONVICTION**

25 22.. Respondent submitted a renewal application to the Board dated June 21, 2013. On
26 the application, he indicated that he had been convicted of a crime.

27 23. On November 16, 2012, at about 10:10 p.m., police in Prescott, Arizona, received
28 report that a car had almost hit another vehicle, then had run off road and had gotten a flat tire.
The driver of the car was reported to still be changing the tire.

///

1 24. The police found respondent changing a tire at the location. The driver of the other
2 vehicle identified respondent as the driver of the car that almost hit his vehicle.

3 25. Respondent said he did not know what happened to the tire. Respondent did not have
4 his driver's license or registration. He had red, bloodshot, watery eyes, and a strong odor of an
5 alcoholic beverage coming from his breath. He admitted to running off the road. He also
6 admitted to having three drinks and to drinking rum. He asked the officer several times if he
7 could walk home, and stated he knew that he should not have gotten into his car. His
8 performance on the field sobriety tests led the officer to believe respondent was under the
9 influence of alcohol.

10 26. Respondent was arrested and charged with two counts of driving or actual physical
11 control of a vehicle while under the influence, class 1 misdemeanors (Ariz. Rev. Stat. § 28-
12 1381(A)(1) &(2)),³ and driving or actual physical control of a vehicle while under the extreme
13 influence of intoxicating liquor, a class 1 misdemeanor (Ariz. Rev. Stat. § 28-1382(A)(1)).⁴
14 Breath tests had measured respondent's blood alcohol level at 0.175 and 0.179 percent.

15 27. On December 26, 2012, in the City of Prescott [Arizona] Magistrate Court, Case
16 Number 2012110672C, entitled *State of Arizona v. Daniel Michael Clauser*, respondent pled

17 ³ Arizona Revised Statutes section 28-1381 states in part:

18 “A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this
19 state under any of the following circumstances:

20 “1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance
21 containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if
the person is impaired to the slightest degree.

22 “2. If the person has an alcohol concentration of 0.08 or more within two hours of driving
23 or being in actual physical control of the vehicle and the alcohol concentration results from
alcohol consumed either before or while driving or being in actual physical control of the
vehicle.”

24 ⁴ Arizona Revised Statutes section 28-1382 states in part:

25 “A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this
26 state if the person has an alcohol concentration as follows within two hours of driving or being in
27 actual physical control of the vehicle and the alcohol concentration results from alcohol
consumed either before or while driving or being in actual physical control of the vehicle:

28 “1. 0.15 or more but less than 0.20.”

1 guilty to driving or actual physical control while under the extreme influence of intoxicating
2 liquor, a class 1 misdemeanor (Ariz. Rev. Stat. § 28-1382(A)(1)). The other charges were
3 dismissed. On February 27, 2013, respondent was sentenced to 1 year unsupervised probation.
4 This probationary sentence included 9 days' incarceration, installation of an interlock device in
5 lieu of 21 additional days' incarceration, and 5 days' community service.

6 **THIRD CAUSE FOR DISCIPLINE**
7 **Business and Professions Code section 490, subdivision (a)**
8 **Conviction Substantially Related**

9 28. The allegations of paragraphs 22-27 are realleged and incorporated by reference as if
10 fully set forth.

11 29. Respondent has subjected his pharmacy technician registration to disciplinary action
12 for being convicted of a crime substantially related to the qualifications, functions, or duties of a
13 pharmacy technician (Bus. & Prof. Code, § 490, subd. (a)). As set forth in paragraphs 22-27
14 above, respondent was convicted in Prescott, Arizona, of driving or having actual physical control
15 of a vehicle while under the extreme influence of intoxicating liquor, a class 1 misdemeanor
(Ariz. Rev. Stat. § 28-1382(A)(1)).

16 **FOURTH CAUSE FOR DISCIPLINE**
17 **Business and Professions Code section 4301, subdivision (h)**
18 **Unprofessional Conduct – Use of Alcoholic Beverage in a Manner Dangerous or Injurious**
19 **to Self or Public**

20 30. The allegations of paragraphs 22-27 are realleged and incorporated by reference as if
21 fully set forth.

22 31. Respondent has subjected his pharmacy technician registration to disciplinary action
23 for the unprofessional conduct of using alcoholic beverages in a manner dangerous or injurious to
24 himself or the public (Bus. & Prof. Code, § 4301, subd. (h)). As set forth in paragraphs 22-27
25 above, respondent drove or had physical control of a vehicle while under the extreme influence of
26 intoxicating liquor. He had almost hit another vehicle, then had run off road and had gotten a flat
27 tire.

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FIFTH CAUSE FOR DISCIPLINE
Business and Professions Code section 4301, subdivision (l)
Unprofessional Conduct – Conviction Substantially Related

32. The allegations of paragraphs 22-27 are realleged and incorporated by reference as if fully set forth.

33. Respondent has subjected his pharmacy technician registration to disciplinary action for the unprofessional conduct of being convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician (Bus. & Prof. Code, § 4301, subd. (l)). As set forth in paragraphs 22-27 above, respondent was convicted in Prescott, Arizona, of driving or having actual physical control of a vehicle while under the extreme influence of intoxicating liquor, a class 1 misdemeanor (Ariz. Rev. Stat. § 28-1382(A)(1)).

PRAYER

WHEREFORE, complainant requests that a hearing be held on the matters alleged in this accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 41450 issued to Daniel Michael Clauser;
2. Ordering Daniel Michael Clauser 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/8/14 _____ *Virginia Herold*
 VIRGINIA HEROLD
 Executive Officer
 Board of Pharmacy
 Department of Consumer Affairs
 State of California
 Complainant

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