

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GREGORY SALUTE  
Supervising Deputy Attorney General  
3 SUSAN MELTON WILSON  
Deputy Attorney General  
4 State Bar No. 106902  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-4942  
6 Facsimile: (213) 897-2804  
E-mail: Susan.Wilson@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
12 Probation Against,

Case No. 3573

13 **KENNETH CHARLES RHODES**  
18909 Superior St.  
14 Northridge, CA 91324

PETITION TO REVOKE PROBATION

15 Pharmacy Technician Registration  
16 No. TCH 14881

17 One.

18  
19 Complainant alleges:

20 PARTIES

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

24 2. On or about January 13, 1995, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 14881 to Kenneth Charles Rhodes (Respondent). The Pharmacy  
26 Technician Registration expired on November 30, 2008, and has not been renewed.

27 ///

28

3. In a disciplinary action entitled "In the Matter of Accusation Against Kenneth Charles Rhodes," Case No. 2617, the Board of Pharmacy, issued a decision, effective March 30, 2005, in which Respondent's Pharmacy Technician Registration was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as **Exhibit A** and is incorporated by reference.

4. Respondent remains on probation, since Respondent ceased practice as a pharmacy technician on or about April 30, 2005, and has not resumed practice since that date. Under express language of Probation Condition 11<sup>1</sup> of the Board's decision, no time since April 30, 2005 is applicable to the reduction of Respondent's three year probation.

JURISDICTION

5. 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.

6. Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

---

<sup>1</sup> At all times after the effective date of the decision, Probation Condition 11 provided: "It is a violation of probation for respondent to work less than 40 hours per month as a pharmacy technician/exemptee. Should respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, respondent must notify the board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

"Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of a pharmacy technician as defined in section 4115 of the Business and Professions Code."

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

2           "(4) Revoking his or her license.

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

5           "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
6 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
7 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
8 may issue the license subject to any terms or conditions not contrary to public policy, including,  
9 but not limited to, the following:

10           "(1) Medical or psychiatric evaluation.

11           "(2) Continuing medical or psychiatric treatment.

12           "(3) Restriction of type or circumstances of practice.

13           "(4) Continuing participation in a board-approved rehabilitation program.

14           "(5) Abstention from the use of alcohol or drugs.

15           "(6) Random fluid testing for alcohol or drugs.

16           "(7) Compliance with laws and regulations governing the practice of pharmacy.

17           "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
18 certificate of licensure for any violation of the terms and conditions of probation. Upon  
19 satisfactory completion of probation, the board shall convert the probationary certificate to a  
20 regular certificate, free of conditions.

21           "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
22 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
23 shall have all the powers granted therein. The action shall be final, except that the propriety of  
24 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
25 Civil Procedure."

26           ///

27           ///

28           ///



1 10. Respondent's license expired on November 30, 2008 and has not been renewed.

2 11. Respondent's probation is subject to revocation because he failed to comply with  
3 Condition 1 by obtaining the required PTCB certification which would have allowed him to  
4 resume practice, and because he has failed to comply with Condition 9, which requires him to  
5 maintain an active current pharmacy technician license with the Board, at all times while on  
6 probation.

7 SECOND CAUSE TO REVOKE PROBATION

8 **(Failure to Maintain 40 Hours Monthly Employment as a Pharmacy Technician)**

9 12. At all times after the effective date of Respondent's probation, Condition 11  
10 required:

11 "It is a violation of probation for respondent to work less than 40 hours per month as a  
12 pharmacy technician/exemptee. Should respondent, regardless of residency, for any reason cease  
13 practicing as a pharmacy technician or an exemptee in California, respondent must notify the  
14 board in writing within 10 days of cessation of practice or the resumption of the practice. Such  
15 periods of time shall not apply to the reduction of the probation period. It is a violation of  
16 probation for respondent's probation to remain tolled pursuant to the provisions of this condition  
17 for a period exceeding three consecutive years.

18 "Cessation of practice" means any period of time exceeding 30 days in which respondent  
19 is not engaged in the practice of a pharmacy technician as defined in section 4115 of the Business  
20 and Professions Code."  
21

22 13. Respondent's probation is subject to revocation because he failed to comply with  
23 Probation Condition 11, referenced above, in that he has not worked at least 40 hours per month  
24 for each month of probation. Respondent has not been legally employed as a pharmacy technician  
25 at any time during the probation period. The circumstances of the violation are as follows:  
26  
27  
28

1 A. Respondent is and remains suspended from working until certified

2 Under Condition 1 of the probation order, Respondent was suspended from working  
3 as a pharmacy technician until he was certified by the Pharmacy Technician Certification Board.  
4 At no time after the effective date of the probation order, did Respondent obtain the required  
5 certification and/or provide proof of said certification to the Board.

6 B. Expired License

7 Respondent's license expired on November 30, 2008 and has not been renewed.

8 C. Tolling of Probation

9 Under Condition 11 of the Probation Order Respondent's failure to maintain  
10 employment is construed as a "cessation of practice", which results in the tolling of his probation.  
11 The Board's probation monitor calculates that Respondent 'ceased practice' on April 30, 2005.  
12 No time since that date has applied to the reduction of his three year probation

13 THIRD CAUSE TO REVOKE PROBATION

14 **(Failure to Submit Quarterly Reports)**

15 14. At all times after the effective date of Respondent's probation, Condition 3 stated:

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

21 15. Respondent's probation is subject to revocation because he has failed to comply with  
22 Probation Condition 3, referenced above, in that the Board's probation monitor has not received  
23 any required written quarterly report(s) from Respondent since January 17, 2008.

24 FOURTH CAUSE TO REVOKE PROBATION

25 **(Failed to Submit Cost Recovery Payments)**

26 16. At all times after the effective date of Respondent's probation, Condition 7 stated:

27 "Respondent shall pay to the board its costs of investigation and prosecution in the  
28 amount of \$4,345.75. Respondent shall make said payments in quarterly installments over the

1 period of probation as follows: 19 quarterly installments of \$217.28 and a final installment of  
2 \$217.43. Each payment shall be made with the quarterly report required above.

3 If Respondent fails to pay the costs as specified by the board and on the date(s)  
4 determined by the board, the board shall, without affording the respondent notice and the  
5 opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed.  
6 The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to  
7 reimburse the board its costs of investigation and prosecution.”

8 17. Respondent’s probation is subject to revocation because he failed to comply with  
9 Probation Condition 7, referenced above, in that, though he has made payments from time to  
10 time, Respondent has failed to complete cost recovery payments in a timely manner, and has  
11 failed to pay the remaining balance of \$2,263.00.

12 FIFTH CAUSE TO REVOKE PROBATION

13 **(Tolling of Probation for Period Exceeding Three Years)**

14 18. As previously alleged, under Condition 11 of the Probation Order Respondent’s  
15 failure to maintain an active license, is construed as a “cessation of practice”, which has resulted  
16 in the tolling of his probation for a period of time exceeding three years, commencing on or about  
17 April 30, 2005, and continuing.

18 19. Respondent’s probation is subject to revocation under the express language of  
19 Condition 11, which states “it is a violation of probation for Respondent’s probation to remain  
20 tolled pursuant to the provisions of (Condition 11) for a period exceeding three consecutive  
21 years.”

22 PRAYER

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

25 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2617  
26 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician  
27 Registration No. TCH 14881 issued to Kenneth Charles Rhodes;

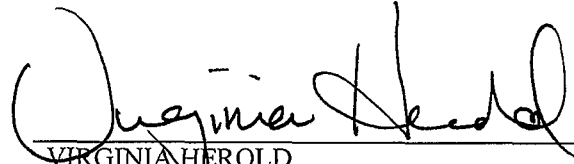
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Revoking or suspending Pharmacy Technician Registration No. TCH 14881, issued to Kenneth Charles Rhodes; and

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

DATED: 3/22/10



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

LA2010600178  
50595513.doc