

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

In the Matter of the Accusation Against :

CAPPIE JONES,  
3977 So. Harvard Boulevard  
Los Angeles, CA 90062

Pharmacy Technician No. TCH 24529

Respondent.

Case No. 2571

OAH No. L2003100530

**PROPOSED DECISION**

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 20, 2005.

Susan Melton Wilson, Deputy Attorney General, represented Complainant Patricia F. Harris, Executive Officer of the Board of Pharmacy.

Billy H. Hairston, Attorney at Law, represented Respondent Cappie Jones (hereinafter Respondent) who was present at hearing.

Oral and documentary evidence was received and the matter was submitted on January 20, 2005.

**FACTUAL FINDINGS**

1. Patricia F. Harris (Complainant) made the Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

2. On December 8, 1997, the Board issued Pharmacy Technician License Number THC 24529 to Respondent. The pharmacy technician license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2006, unless renewed.

3. Pursuant to the parties' stipulation at hearing, Respondent and Complainant agreed that the factual and legal allegations asserted in the Accusation, Paragraphs 1 through 21, pages 1 through 8, are true and correct. Accordingly, Complainant's Accusation is incorporated by reference pursuant to Government Code section 11425.50, subdivision (b), of the Administrative Procedures Act. Though Respondent admitted all of the charges in the Accusation, she did not waive her right to present evidence in mitigation for purposes of discipline.

4. While working at Sav-On Drug Store Pharmacy No. 6131 (Sav-On) as a pharmacy technician, Respondent fraudulently altered and rewrote prescriptions by falsifying refill authorizations, thereby illegally providing to herself and her husband, Edmund Lionel Jones, the drug Vicodin ES, a controlled substance, on at least 46 occasions. Respondent took five physician authorized prescriptions for Vicodin, four written by her physicians, and one written by her husband's physician, and fraudulently altered these prescriptions to obtain approximately 3,710 Vicodin tablets through unauthorized refills over a period of 14 months, from June 2000 until August 2001. Respondent also created false prescriptions and refill authorizations for the drugs Viagra and Meridia between January 2001 and August 2001.

5. Respondent does not deny that she falsified the prescription refills to obtain the drugs. When confronted by Sav-On personnel in September 2001, Respondent admitted fraudulently re-writing the Vicodin prescriptions in order to obtain the drug for self-administration. However, at hearing, Respondent asserted that she did not obtain the drugs for her personal consumption, but that the drugs were for her husband, Edmund Jones, who had become addicted to the Vicodin. She maintained that Edmund Jones forced her into falsifying the prescription refills and threatened her with physical injury and violence if she did not comply with his demands.

6. Respondent testified that she was in an abusive relationship with her husband and she filed for divorce in February 2003. The divorce has not been finalized but she has no contact with her husband at this time. According to Respondent, her husband beat her when she did not comply with his demands to fill the unauthorized prescriptions. She presented photos showing the physical abuse inflicted on her by her husband.

7. Respondent presented as a sympathetic witness and she appeared to be emotionally distraught over her troubled marriage and the Board's disciplinary action against her. However, Respondent's statement at hearing that she did not take the drugs for personal use is inconsistent with her initial statement to Sav-On personnel that she obtain the prescriptions for self-administration. Respondent provided no corroborating evidence to support her testimony that it was her husband who suffered from the Vicodin addiction and forced her to commit the fraudulent refilling of the numerous prescriptions. Additionally, her testimony alone that she has separated from her husband, or that she herself did not suffer from drug addiction, can not independently support a finding absent corroborating evidence. Respondent presented no letters of recommendation attesting to her good character, or letters from her physicians or any counselor to support her claim that she was not taking these drugs or suffering from a personal addiction .

8. Given the seriousness and egregious nature of the conduct committed by Respondent over an extensive period of time, Respondent's sole testimonial evidence can not satisfy her burden of showing compelling evidence in mitigation in this case. Although sympathetic to Respondent's plight, the Board's obligation is to protect the public from harm committed by its licensees. Respondent's unlawful and unprofessional conduct in obtaining controlled substances through fraud and acts of dishonesty constitute moral turpitude and are directly related to her duties as a pharmacy technician.

9. Based upon the evidence presented in this case, the Board has established sufficient cause to conclude that the public would be placed at significant risk of harm if Respondent is allowed to retain her pharmacy technician license. There is insufficient evidence in mitigation to support Respondent's request that she be allowed to retain her license at this time.

10. The Board seeks to recover costs of investigation and enforcement in this matter in the amount of \$9,144.50. These costs include \$1,430.00 in investigative services from the Board's staff and \$7,714.50 in costs incurred by the Attorney General for legal services. The Board has properly documented its investigation and enforcement costs in this case and the costs are found to be reasonable.

#### LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides that the Board shall take action against any holder of license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Section 4301, subdivision (f), provides that unprofessional conduct includes 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. Unprofessional conduct also includes violations of any statutes of this state or of the United States regulating controlled substances and dangerous drugs. (Bus. & Prof. Code § 4301, subd. (j).) Finally, unprofessional conduct includes violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of Chapter 9 (commencing with section 4000) of the Business and Professions Code or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the Board. (Bus. & Prof. Code § 4301, subd. (o).)

2. Health and Safety code section 11173, subdivision (a), provides 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, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) the concealment of a material fact.

3. Pursuant to stipulation by the parties at hearing, cause exists to discipline Respondent Cappie Jones' Pharmacy Technician License No. TCH 24529, pursuant to Business and Professions Code section 4300 as defined in section 4301, subdivisions (f), (j)

and (o), in conjunction with Health and Safety Code section 11173, subdivision (a)(1), in that Respondent obtained controlled substances (Vicodin) by fraud, and furnished these unauthorized controlled substance to others, by reason of Factual Findings 3, 4, and 9.

4. Pursuant to stipulation by the parties at hearing, cause exists to discipline Respondent Cappie Jones' Pharmacy Technician License No. TCH 24529, pursuant to Business and Professions Code section 4300 as defined in section 4301, subdivisions (f), in that Respondent committed acts of dishonesty, fraud, and corruption, by reason of Factual Findings 3, 4, and 9.

5. There is insufficient evidence of rehabilitation or mitigation to establish that Respondent's retention of her pharmacy technician license would not create a significant risk of harm to the public's health, safety and welfare, by reason of Factual Findings 5 through 8.

6. Cause exists to order Respondent to pay the Bureau's reasonable costs of investigation and enforcement in the total amount of \$9,144.50, by reason of Factual Findings 9 and 10.

#### ORDER

1. Respondent Cappie Jones' Pharmacy Technician License No. TCH 24529 is hereby revoked.

2. Respondent Cappie Jones is ordered to pay the Board's reasonable costs of investigation and enforcement in the amount of \$9,144.50.

DATED: February 18, 2005

  
MICHAEL A. SCARLETT  
Administrative Law Judge  
Office of Administrative Hearings

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

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CAPPIE JONES,  
3977 So. Harvard Boulevard  
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Pharmacy Technician No. THC 24529,

Respondent.

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DECISION

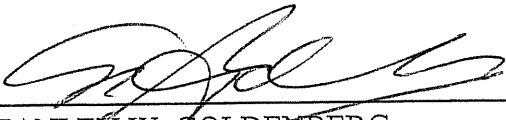
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on April 21, 2005.

IT IS SO ORDERED March 22, 2005.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
STANLEY W. GOLDENBERG  
Board President

rfm

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

11 In the Matter of the Accusation Against:

Case No. 2571

12 CAPPIE JONES  
3977 So. Harvard Boulevard  
Los Angeles, California 90062

**ACCUSATION**

13 Pharmacy Technician No. TCH 24529

14 Respondent.

15  
16 Complainant alleges:

17 PARTIES

18 1. Patricia F. Harris (Complainant) brings this Accusation solely in her  
19 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
20 Affairs.

21 2. On or about December 8, 1997, the Board of Pharmacy issued Pharmacy  
22 Technician License Number TCH 24529 to Cappie Jones (Respondent). The Pharmacy  
23 Technician license was in full force and effect at all times relevant to the charges brought herein  
24 and will expire on June 30, 2003, unless renewed.

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JURISDICTION

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2           3.     This Accusation is brought before the Board of Pharmacy (Board),  
3 Department of Consumer Affairs under the authority of the below mentioned statutes and  
4 regulations.<sup>1</sup>

5           4.     Section 4300 permits the Board to take disciplinary action to suspend or  
6 revoke a license or permit.

7           5.     Section 4301 of the Code states that the Board shall take action against any  
8 holder of a license who is guilty of unprofessional conduct or whose license has been procured  
9 by fraud or misrepresentation or issued by mistake.

10           The term "unprofessional conduct" is expressly defined as subsection "f" to  
11 include the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
12 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
13 whether the act is a felony or misdemeanor or not.

14           The term "unprofessional conduct" is further expressly defined as subsection "j" to  
15 include the violation of any of the statutes of this state or of the United States  
16 regulating controlled substances and dangerous drugs.

17           The term "unprofessional conduct" is further expressly defined as subsection "o"  
18 to include violating or attempting to violate, directly or indirectly, or assisting in  
19 or abetting the violation of or conspiring to violate any provision or term of Chapter 9  
20 (commencing with Section 4000) of the Business and Professions Code or of the applicable  
21 federal and state laws and regulations governing pharmacy, including regulations established by  
22 the board.

23           6.     Section 118(b) provides that the suspension, expiration, or forfeiture by  
24 operation of law of a license issued by a board in the department, or its suspension, forfeiture, or  
25 cancellation by order of the board or by order of a court of law, or its surrender without the

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28           1. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

1 written consent of the board, shall not, during any period in which it may be renewed, restored,  
2 reissued, or reinstated.

3           7.       Section 4022 defines "Dangerous Drugs" as any drug that is unsafe for  
4 self-medication and which by federal or state law can be lawfully dispensed only on prescription.

5           8.       Section 4060 states, in pertinent part, that no person shall possess any  
6 controlled substance, except that furnished to a person upon the prescription of a physician,  
7 dentist, podiatrist, or veterinarian.

8           9.       Pursuant to section 4063, no prescription for a dangerous drug may be  
9 refilled except upon authorization of the prescriber. The authorization may be given orally or at  
10 the time of giving the original prescription. No prescription for any dangerous drug that is a  
11 controlled substance may be designated refillable as needed.

12           10.      Health & Safety Code section 11158 states, in pertinent part, that no  
13 controlled substance classified in Schedule II shall be dispensed without a prescription meeting  
14 the requirements of this chapter. Except as provided in Section 11159 or when dispensed  
15 directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled  
16 substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting  
17 the requirements of this chapter.

18           11.      Health & Safety Code section 11173(a) states that no person shall obtain  
19 or attempt to obtain controlled substances, or procure or attempt to procure the administration of  
20 or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or  
21 (2) by the concealment of a material fact.

22           12.      Health & Safety Code section 11377(a) states, in pertinent part, that every  
23 person who possesses any controlled substance which is classified in Health & Safety Code  
24 section 11055(d)(2) and which is not a narcotic drug, unless upon the prescription of a physician,  
25 dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by  
26 imprisonment in a county jail for a period of not more than one year or in the state prison.

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1 13. Business and Professions Code Section 125.3 provides that the Board may  
2 request the administrative law judge to direct a licensee found to have committed violation(s) of  
3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
4 enforcement of the case.

5 DRUG CLASSIFICATIONS

6 14. Vicodin (generic - Hydrocodone 5mg and Acetaminophen 500mg) is a  
7 dangerous drug as defined by section 4022 and is classified as a Schedule III controlled substance  
8 as defined in Health and Safety Code section 11056(e)(4). It is a narcotic analgesic used in the  
9 treatment of moderate to severe pain.

10 15. Vicodin ES (generic - Hydrocodone 7.5 and Acetaminophen 750mg) is a  
11 dangerous drug as defined section 4022 and is classified as a Schedule III controlled substance as  
12 listed in the Health and Safety Code Section 11056(e)(4). It is a narcotic analgesic used in the  
13 treatment of moderate to severe pain.

14 16. Meridia (sibutramine) is a dangerous drug as defined by section 4022 and  
15 is a schedule IV controlled substance as listed in the in Title 21, California Code of Regulations,  
16 section 1308.14(e). It is used to treat obesity.

17 17. Viagra (generic - Sildenafil Citrate) is a dangerous drug as defined by  
18 section 4022. It is used in the treatment of Erectile Dysfunction.

19 FIRST CAUSE FOR DISCIPLINE

20 **(Obtaining Controlled Substance by Fraud)**

21 18. Respondent has subjected her license to discipline for unprofessional  
22 conduct pursuant to section 4300 as defined in section 4301(j) and (o) in conjunction with Health  
23 and Safety Code section 11173 (a)(1) in that, while employed at Sav-On Drug Store Pharmacy #  
24 6131 ("Sav-On"), Respondent fraudulently altered and rewrote prescriptions by falsifying refill  
25 authorizations, thereby illegally providing to herself and/or her husband Edmund Lionel Jones,  
26 the drug Vicodin ES, a controlled substance, on at least 47 occasions, as follows:

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1 UNAUTHORIZED REFILLS ATTRIBUTED TO DR. PHILLIPS [14]

2 A. On April 10, 2001, Dr. Mike Phillips (Emergency Department, White  
3 Memorial Medical Center) wrote prescription **437711** for Respondent's husband,  
4 Edmund Lionel Jones. The prescription was for 40 Vicodin ES tablets with no  
5 refills. It was filled on April 11, 2001. Respondent then obtained 14 unauthorized  
6 "refills" (40 tablets each) of this prescription by the following means:

7 i) Without authorization by the prescriber, Respondent altered  
8 original prescription **437711** to obtain refills 5 times : April 19,  
9 2001, April 26, 2001, May 1, 2001, May 8, 2001 and May 15,  
10 2001.

11 ii) Without authorization by the prescriber, Respondent  
12 rewrote the prescription as **445745**, generating a new prescription order in  
13 the name of Dr. Phillips, which was filled 3 times : August 17, 2001,  
14 August 21, 2001 and August 27, 2001.

15 iii) Without authorization of the prescriber, Respondent  
16 rewrote the prescription as **440461**, generating a new prescription order  
17 in the name of Dr. Philips, which was filled 6 times: May 22, 2001,  
18 May 29, 2001, June 28, 2001 July 31, 2001 , August 6, 2001 and  
19 August 13, 2001.

20 UNAUTHORIZED REFILLS ATTRIBUTED TO DR. RAGLAND [31]

21 B. On January 13, 2000, Dr. Howard Ragland Jr., a gynecologist, wrote  
22 prescription no. **406401** for Respondent for Vicodin ES for 100 tablets, with no  
23 refills. It was filled one time only, on January 18, 2000. Respondent then  
24 obtained 6 unauthorized "refills" (100 tablets each) of this prescription by the  
25 following means:

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1 i) Without authorization by the prescriber, Respondent  
2 rewrote the prescription as **417680**, generating a new prescription  
3 order in the name of Dr. Ragland, which was filled 6 times: June  
4 19, 2000, June 28, 2000, July 24, 2000, August 8, 2000, August 11,  
5 2000 and August 21, 2000.

6 C. On November 17, 2000, Dr. Ragland, wrote a second prescription for  
7 Respondent which included, among other medications, a prescription for Vicodin ES 100  
8 tablets. The prescription, which includes no refills, was filled under prescription number  
9 **428156**, on November 18, 2000. Respondent then obtained 23 unauthorized "refills" (100  
10 tablets each) of this prescription by the following means:

11 i) Without authorization by the prescriber, Respondent  
12 altered original prescription **428156** to obtain refills 5 times:  
13 December 12, 2000, December 20, 2000, January 5, 2001, January  
14 19, 2001, and February 3, 2001.

15 ii) Without authorization by the prescriber, Respondent  
16 rewrote the prescription as **417680** generating a new prescription  
17 order in the name of Dr. Ragland, which was filled 6 times:  
18 June 19, 2000, June 28, 2000, July 24, 2000, August 8, 2000,  
19 August 11, 2000 and August 21, 2000.

20 iii) Without authorization by the prescriber, Respondent  
21 rewrote the prescription as **428156**, generating a new prescription  
22 order in the name of Dr. Ragland, which was filled 6 times:  
23 November 18, 2000, December 12, 2000, December 20, 2000,  
24 January 5, 2001, January 19, 2001, and February 3, 2001.

25 iv) Without authorization by the prescriber, Respondent  
26 rewrote the prescription as **434839**, generating a new prescription  
27 order in the name of Dr. Ragland, which was filled 6 times:  
28 February 23, 2001, March 7, 2001, March 21, 2001, April 9, 2001,

1 April 24, 2001, and May 9, 2001.

2 D. On July 27, 2001, Dr. Ragland wrote a third prescription no. 444414 for  
3 Respondent for Vicodin ES for 100 tablets. Dr. Ragland did not authorize refills. It was  
4 filled on July 27, 2001. Respondent then obtained 2 unauthorized "refills" ( 100 tablets  
5 each) of this prescription by the following means:

6 i) Without authorization by the prescriber, Respondent altered  
7 original prescription 437711 to obtain refills 2 times: August 14,  
8 2001 and August 20, 2001.

9 UNAUTHORIZED REFILLS ATTRIBUTED TO DR. YOUNG [2]

10 E. On July 26, 2001, Dr. William Young wrote a prescription 444817 for  
11 Respondent for 50 Vicodin tablets with no refills. It was filled on August 3, 2001. Without  
12 authorization of the prescriber, Respondent altered the prescription to dispense 1 refill on  
13 August 15, 2001.

14 F. On or about September 20, 2001, when confronted by Sav-On personnel  
15 with evidence of the fraudulent prescriptions referenced above, Respondent admitted to  
16 fraudulently rewriting the Vicodin prescriptions in order to obtain the drug for self-  
17 administration.

18 SECOND CAUSE FOR DISCIPLINE

19 **(Acts of Dishonesty, Fraud, Corruption)**

20 19. Respondent has subjected her license to discipline pursuant to section  
21 4300 as defined in section 4301(f) for unprofessional conduct due to multiple acts involving  
22 dishonesty, fraud or corruption between approximately June, 2000 and August 2001, while  
23 employed at Sav-On Drug Store Pharmacy # 6131 by which she falsified prescription orders to  
24 illegally obtain the drug Vicodin , as more fully described in paragraph 18 above.

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1 THIRD CAUSE FOR DISCIPLINE

2 **(Unauthorized Furnishing of Controlled Substance )**

3 20. Respondent has subjected her license to discipline for unprofessional;  
4 conduct pursuant to section 4300 as defined in section 4301(j) and (o) in conjunction with Health  
5 and Safety Code sections 11158 and 11171 in that, between approximately June, 2000 and  
6 August 2001, while employed at Sav-On Drug Store Pharmacy # 6131, Respondent fraudulently  
7 altered and/or rewrote prescriptions by falsifying refill authorizations, in order to illegally furnish  
8 and dispense to herself and/or her husband Edmund Lionel Jones, the drug Vicodin , a controlled  
9 substance, as described in paragraph 18 above.

10  
11 OTHER MATTERS

12 21. Prescription records provided by Sav- On Drug Store Pharmacy # 6131  
13 indicate that Respondent falsified prescriptions to obtain drugs other than Vicodin, by creating  
14 fictional refill authorizations or other methodology. In addition to the instances described above,  
15 Respondent illegally provided drugs to herself and/or her husband Edmund Lionel Jones as  
16 follows:

17 A. Viagra prescription no. 434856

18 On February 27, 2001, a prescription was generated from the pharmacy computer  
19 for 6 Viagra 100mg tablets, prescribed by Dr. Howard Ragland Jr., an obstetric and gynecology  
20 physician. The front of the prescription stated, "original 2/27/01, refill 2" processed by "CJ".  
21 The back of the prescription stated "update inventory tracking" and "2xMartha22701CJ".  
22 Prescription 434856 was refilled 4 times: March 29, 2001, June 2, 2001, July 2, 2001, and  
23 August 2, 2001.

24 B. Meridia prescription 431279

25 On January 9, 2001, a prescription was generated from the pharmacy computer  
26 for Meridia 15mg, 30 tablets .The front of the prescription stated "original January 19, 2001,  
27 refill 0." The front of the prescription stated, "Enroll patient in point of change program" and  
28 "1xChristina1901CJ". Prescription 431279 was refilled 1 time on June 12, 2001.

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 Number TCH 24529, issued to Cappie Jones;
2. Ordering Cappie Jones 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: 7/18/03

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

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