

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

In the Matter of the Accusation Against:

KENNETH JOSEPH FORESTA  
227 Santa Cruz Boulevard  
Santa Barbara, CA 93109

Pharmacist License No. RPH 24637

Respondent.

Case No. 2573  
OAH No. L2003030496

**PROPOSED DECISION**

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, on October 21, 2003, at Ventura, California.

Christopher J. Ruiz, Deputy Attorney General, represented Complainant.

Respondent Kenneth J. Foresta represented himself.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Findings of Fact:

1. Patricia F. Harris made the Accusation in her official capacity as the Executive Officer of the Board of Pharmacy ("Board").
2. At all times pertinent hereto, Respondent Kenneth J. Foresta ("Respondent") was and now is the holder of Pharmacist License Number RPH 24637 issued by the Board. Pursuant to written stipulation of the parties, Respondent's license is suspended "pending the resolution of the Accusation."

3. On August 19, 2002, in the Superior Court of the State of California, County of Los Angeles, Respondent pled nolo contendere to one count of violating Health and Safety Code Section 11550(a) (under the influence of a controlled substance) and one count of violating Health and Safety Code Section 11364 (possession of drug paraphernalia) misdemeanors substantially related to the functions, duties and qualifications of a Board licensee. Entry of judgment was deferred for a period of not less than 18 months and no more than three years on condition that Respondent enter and complete a drug treatment program. Respondent testified he has completed that program; however, the court has taken no further action on his plea as the minimum 18 month period has not yet passed.

Respondent's plea was based on his taking an overdose of heroin, a Schedule I (prohibited) substance on May 19, 2002. Respondent purchased the heroin "on the street" and prepared it for injection using typical street paraphernalia, including a spoon and cigarette lighter. Respondent testified he took this drug in an attempted suicide.

4. After the above incident, Respondent twice attempted to participate in the Board's Diversion Program. He actually entered the program at one point, but later withdrew. His reasons for withdrawing were that: (1) he could not afford the program; and (2) he was not a drug addict and therefore could not pass the first step of the 12 step program, which requires admission that one is addicted.

5. Based on all the evidence presented, it is difficult to determine whether Respondent is a drug addict or not. His explanation of "attempted suicide" might explain the single overdose. But it does not explain his repeated injection of cocaine over the preceding three month period. Respondent's explanation for his repeated use of this drug is that he was "trying to find the right dose" that would kill him. This explanation makes no sense. Respondent had ample opportunity at his job at Cottage Hospital to avail himself of any number of lethal drugs. In addition, Respondent admitted that he had, in the past, "snorted" cocaine with friends. It is very possible Respondent is in denial about his condition. It is also possible that, even if Respondent is not an "addict", his repeated use of cocaine was as self-medication for his admittedly deep depression. In either event, Respondent has a long history of drug abuse with no apparent attempt at rehabilitation.

6. Respondent has been diagnosed with severe depression and anxiety disorder since at least 1999. He has had limited psychotherapy, but was prescribed different psychotropics to alleviate his condition. In addition to antidepressants, Respondent steadily used benzodiazepines (Klonopin and Valium) as well as chloral hydrate for sleep. He was suicidal for a long period of time, and is still depressed, although he states his depression is currently more moderate. He has no plan of action as to what he would do in the event his depression worsens and he again becomes suicidal. Based on his past history, he would most likely again abuse drugs, if only for relief of symptoms. He continues to refuse treatment for this behavior. He poses a clear and present danger to himself and others.

7. The Board reasonably incurred costs of investigation and prosecution of this action, including fees of the Attorney General, in the total sum of \$15,633.50

### CONCLUSIONS OF LAW

1. Respondent's license is subject to discipline under the provisions of Business and Professions Code Section 4300 for his violation of Business and Professions Code Sections 4060, 4301(h) and 4301(j), severally, for his conduct set forth in Finding 3.

2. The Board is entitled to recover from Respondent the sum of \$15,633.50 under the provisions of Business and Professions Code Section 125.3, by reason of Finding 7.

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. License Number RPH 24637 issued to Respondent Kenneth J. Foresta, together with all licensing rights appurtenant thereto, is revoked.

2. Respondent Kenneth J. Foresta shall pay to the Board the sum of \$15,633.50 at such time and in such manner as the Board, in its discretion, may direct.

Date: 10-31-03



RALPH B. DASH  
Administrative Law Judge  
Office of Administrative Hearings

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STATE OF CALIFORNIA

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Pharmacist License No. RPH 24637

Respondent.

Case No. 2573

OAH No. L2003030496

DECISION

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

This Decision shall become effective on January 14, 2004.

IT IS SO ORDERED this 15th day of December, 2003.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
JOHN D. JONES  
Board President

lcp

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8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Accusation Against:

Case No. 2573

12 KENNETH JOSEPH FORESTA  
227 Santa Cruz Boulevard  
13 Santa Barbara, CA 93109

**A C C U S A T I O N**

14 Pharmacist License No. RPH 24637

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

22 2. On or about August 12, 1966, the Board of Pharmacy issued Pharmacist  
23 License Number RPH 24637 to Kenneth Joseph Foresta (Respondent). The Pharmacist License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 May 31, 2004, 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 of the Code permits the Board to take disciplinary action to  
6 suspend or revoke a license issued by the Board.

7           5.     Section 4301 of the Code states, in pertinent part:

8           “The board shall take action against any holder of a license who is guilty of  
9 unprofessional conduct or whose license has been procured by fraud or misrepresentation or  
10 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the  
11 following:

12                   .....

13           “(h) The administering to oneself, of any controlled substance, or the use of any  
14 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or  
15 injurious to oneself, to a person holding a license under this chapter, or to any other person or to  
16 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
17 the public the practice authorized by the license.

18                   .....

19           “(j) The violation of any of the statutes of this state or of the United States  
20 regulating controlled substances and dangerous drugs.”

21           6.     Section 4060 of the Code states, in pertinent part, that “no person shall  
22 possess any controlled substance, except that furnished to a person upon the prescription of a  
23 physician, dentist, podiatrist, or veterinarian.”

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



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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:

A. Revoking or suspending Pharmacist License Number RPH 24637, issued to Kenneth Joseph Foresta;

B. Ordering Kenneth Joseph Foresta 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;

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

DATED: 12/2/02

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