

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

In the Matter of the Petition to Revoke the
Probation of:

RITA CHRISTINE DUNNING, R.P.H.,

Pharmacist License No. RPH 37943

Respondent.

Board of Pharmacy Case No. 2786

OAH No. L2004120291

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 7, 2005, in San Diego, California.

Timothy L. Newlove, Deputy Attorney General, represented complainant Patricia F. Harris, the Executive Office of the California State Board of Pharmacy, Department of Consumer Affairs, State of California.

No appearance was made by or on behalf of respondent Rita Christine Dunning.

The matter was submitted on April 7, 2005.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 23, 2004, complainant Patricia F. Harris, the Executive Office of the California State Board of Pharmacy (the Board), Department of Consumer Affairs, State of California, signed the Petition to Revoke Probation. The Petition to Revoke Probation and other required jurisdictional documents were served on respondent Rita Christine Dunning, R.P.H. (Dunning).

By Notice of Defense dated November 9, 2004, Dunning requested a hearing. In her Notice of Defense, Dunning identified her legal counsel as Joel S. Primes (Attorney Primes), whose was listed as 518 Sydling Court, Sacramento, CA 95864 and whose telephone number was given as (916) 487-5453.

On January 11, 2005, a Notice of Hearing was served on Joel S. Primes, Esq. at 518 Sydling Court, Sacramento, CA 9586. At that time, Attorney Primes was noted to be Dunning's legal counsel in the Office of Administrative Hearing's file. The Notice of Hearing advised that an administrative hearing in the matter was set for Thursday, April 7, 2005, to commence at 9:00 a.m. before an Administrative Law Judge at the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San Diego, CA 92101. A Notice of Hearing was not served on Dunning.

Dunning did not contact DAG Newlove, did not contact the Office of Administrative Hearings, and did not request a continuance on or before April 7, 2005.

On April 7, 2005, the matter was called for hearing at 9:00 a.m. Deputy Attorney General Timothy L. Newlove (DAG Newlove) advised the administrative law judge that Attorney Primes told him earlier in the week that he no longer represented Dunning and Dunning would probably not appear at the administrative hearing.

A reported conference call was held between Administrative Law Judge James Ahler, DAG Newlove and Attorney Primes. In the course of that conference, Attorney Primes said he would not be appearing on Dunning's behalf, that he was no longer Dunning's legal counsel, and that Dunning was aware of the date, time and place of the hearing. Attorney Primes said he was not authorized to enter into any of the factual stipulations he and DAG Newlove previously discussed because he was no longer Dunning's legal counsel.

Thereafter, jurisdictional documents were presented, sworn testimony and documentary evidence was received, argument was given, the record was closed and the matter was submitted.

Respondent's License History

2. On September 6, 1983, the Board issued Pharmacist License No. RPH 37943 to Rita Christine Dunning to practice pharmacy in California.

3. On December 226, 2000, complainant Patricia F. Harris, the Board's Executive Officer, signed the Accusation in Case No. 2333 entitled *In the Matter of the Accusation Against: RITA CHRISTINE DUNNING, Pharmacist License No. RPH 37943, Respondent*. The Accusation alleged Dunning was subject to disciplinary action because (1) she used alcoholic beverages in a manner injurious to herself on January 30, 1997, when working at Walgreens in Freedom, California, while under the influence of alcohol to the extent she should not perform her duties as a pharmacist, for which she was sent home from work and was subsequently terminated, (2) she used alcoholic beverages in a manner injurious to herself on August 5, 1999, when working at Drug Emporium in Capitola, California, while under the influence of alcohol to the extent she should not perform her duties as a pharmacist, for which she was sent home from work and was subsequently terminated, and (3) on January 20, 2000, Dunning engaged in dishonest, fraud, deceit or

corruption by advising Board inspectors that no employer had ever taken action against her for alcohol use and by advising Board inspectors she was never asked to leave her place of employment because an employer suspected she had been drinking.

4. Dunning and her (then attorney), James Seltzer, and W. Lloyd Paris, a Deputy Attorney General, signed a Stipulated Settlement and Disciplinary Order to resolve the disciplinary matter. In that settlement document, Dunning admitted for purposes of the settlement that the charges and allegations in the Accusation related to her alcohol use were true and that her pharmacist license was subject to discipline as a result thereof. Dunning agreed to be bound by the Order contained in the settlement document.

5. The disciplinary order revoked Dunning's license, but stayed the revocation and placed Dunning on probation for a period of three years. Probationary terms and conditions contained in the Order included Dunning's participation in the Pharmacy Recovery Program (the PRP), submitting to random biological fluid testing at her expense, abstaining from unauthorized drug use, abstaining from alcohol use, reporting to the Board on a quarterly basis, advising the Board of the name and address of her employers, cooperating with the Board's staff, notifying any employer of the decision in the disciplinary matter and of the terms and conditions of her probation, reimbursing the Board for its costs of investigation and prosecution, and paying probation monitoring costs.

Paragraph 6 provided in part:

"Respondent shall report to the Board or its designee quarterly. The report shall be made either in person or in writing, as directed"

Paragraph 11 provided in part:

"Respondent shall notify all present and prospective employers of the decision in case No. 2333 and the terms, conditions and restrictions imposed on respondent by the decision. Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of undertaking new employment, respondent shall cause his/her employer to report to the Board in writing acknowledging that the employer has read the decision in case No. 2333"

Paragraph 16 provided in part:

Within ten (10) days of a change in employment . . . respondent shall so notify the Board in writing, including the address of the new employer"

Paragraph 18 provided in part:

"If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation . . . is filed

against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation is heard and decided”

6. The Decision and Order was adopted by the Board and became effective on September 22, 2001.

7. On October 4, 2001, Dunning met with Board representatives. Terms and conditions of probation were fully explained to Dunning, who acknowledged in writing that she understood those terms and conditions and acknowledged in writing that her failure to comply with probation might result in further disciplinary action.

8. The Petition to Revoke Probation was filed before the three-year probationary period expired. Under the stipulated agreement and order, Dunning’s period of probation was extended and the Board has continuing jurisdiction in this matter until the petition in this matter is heard and decided.

Violations of Probation

9. Dunning was required to participate in the Pharmacists Recovery Program (PRP), a comprehensive diversion program designed to protect the public by closely monitoring a participant’s use of drugs and alcohol and to assist the participant in recovery from chemical dependency.

On April 10, 2001, Dunning signed a PRP Treatment Contract which outlined her participation in PRP and set forth her obligations. Dunning agreed to submit bodily fluid samples for analysis on request, to abstain from the use of alcohol and drugs except as prescribed, to participate in support groups as required, to attend at least three AA/NA meetings a week and to provide proof of such attendance, and to report all relapses.

Assessments, including the evaluation of bodily fluids, were provided to PRP initially through MNH Services, Inc. and then through Maximus Diversion Programs, which became the successor of MNH Services, Inc. in July 2003. Don Fensterman, LCSW (Fensterman), a Maximus employee, became Dunning’s clinical case manager in early May 2004.

10. Shortly after becoming Dunning’s clinical case manager in May 2004, Fensterman determined that on 86 separate occasions, Dunning had not phoned Compass Vision as required to determine if she was required to give a bodily fluid sample; that Dunning had not provided bodily fluid samples on five occasions from October 2003 through May 2004; that one sample Dunning provided in February 2004 was out-of-range and could not be evaluated; that Dunning was missing work; that Dunning failed to attend more than half a dozen help support group meetings in March and April 2004; and, that Dunning failed to provide proof of attendance at AA/NA meetings for March, April and May 2004.

11. On April 10, 2004, Dunning failed to submit a quarterly report that was due the Board under the stipulated order. Thereafter, Dunning failed to submit to the Board the quarterly reports that were due in July 2004, October 2004 and January 2005.

12. On June 10 and June 14, 2004, Fensterman wrote to Dunning and outlined his understanding of Dunning's failure to comply with the terms of her recovery contract. Fensterman asked Dunning to respond to his letters and to provide him with any evidence of compliance.

Dunning did not respond.

13. On June 14, 2004, Fensterman recommended to the Board that Dunning be terminated from the diversion program. In that letter, Fensterman set forth the details regarding Dunning's noncompliance.

Sometime between June 14 and July 1, 2004, the Board terminated Dunning from its diversion program.

On July 1, 2004, Fensterman advised Dunning that she had been terminated from the Board's diversion program.

14. On September 20, 2004, Dunning telephoned Fensterman and told him she wanted to get back into the diversion program. She said she had been ill, she had been on a suicide watch and she had been held prisoner in her own home. Fensterman said nothing to Dunning that would reasonably lead her to believe she was readmitted to the program.

15. In October 2004, Dunning wrote the Board's Executive Officer. In that letter, Dunning claimed a sobriety date of March 1, 2001, represented that she had completed a 28-day chemical dependency program and a 12 step program, that in March 2004 she became "sick with the flu, a close friend died and my son became despondent over financial and life issues," that her son took her car and Dunning had no transportation, that Dunning had been hospitalized for a few days because of dehydration, grief and stress, that Dunning attempted unsuccessfully to reenter the diversion program after receiving the noncompliance letter, and her goal was to return to her professional life as a pharmacist with a clean license. Dunning asked if an informal resolution could be reached including the extension of probation.

16. On March 11, 2005, Dunning sent the Board what she described as quarterly reports for April 2004, July 2004, October 2004 and January 2005, and copies of several documents establishing her compliance with continuing professional education requirements.

The "quarterly reports" were not filed in a timely fashion. In the April 2004 report, Dunning stated she was employed at Community Medical Pharmacy as a staff pharmacist and her last day of employment was March 11, 2004. In the October 2004 report, Dunning represented she had been employed at various pharmacies on a temporary basis including

Vons and Right Aids. In the January 2005 report, Dunning represented she had been working for "various pharmacies a day or two at a time."

17. Dunning never advised the Board of her new employment as required, nor did she have her new employers complete the required verification of employment form in which the new employer acknowledged that Dunning was on probation with the Board.

18. Dunning's employment with Community Medical Service was terminated on March 23, 2004 due to excessive absences without notice. Dunning did not advise the board of her termination of employment.

Costs of Prosecution

19. The deputy attorney general who prosecuted this action submitted a declaration in which he stated he spent 20.25 hours in the prosecution of the action at a rate of \$139 per hour. The time spent was reasonable, as was the hourly rate. Counsel for complainant was well prepared and was very professional.

The reasonable costs of prosecution up to the date of the administrative hearing totaled \$2,815.

20. The evidence did not establish that Dunning committed a violation of the Pharmacy Law (Bus. & Prof. Code §§ 4000 et seq.), although violations of the terms and conditions of her probation were established.

LEGAL CONCLUSIONS

Service of the Notice of Hearing

1. Government Code section 11509 provides in part:

"The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense"

The Notice of Hearing was served on Attorney Primes, but not on Dunning. Did service on Dunning's legal counsel comply with Government Code section 11509?¹

The purpose of Government Code section 11509 is to advise a respondent (and his or her attorney, if he or she has one) of the date, time and place of the administrative hearing. Government Code section 11509 was designed to afford parties with procedural due process,

¹ If this were a civil action, service of the notice of the hearing date would not be questioned as a result of Code of Civil Procedure sections 465 and 1015.

which requires the parties be given reasonable notice and an opportunity for hearing. See, *Griffin v. Griffin* (1946) 327 U.S. 220, 66 S.Ct. 556, 560; *People v. Lawrence* (1956) 140 C.A.2d 133, 137.

Attorney Primes was properly served with the notice of hearing. He became attorney of record before the notice of hearing was served and after which Dunning no longer had any direct control over the proceeding. See, Witkin, 1 California Procedure (4th Ed.), Attorneys, section 265. DAG Newlove believed he was obligated to deal directly with Attorney Primes, the attorney of record, and not with Dunning personally because she was represented. DAG Newlove may even have believed that service of a notice of hearing on Dunning might be improper since she was represented. See, *Lyidikainen v. Industrial Accident Commission* (1939) 36 C.A.2d 298, 301 [notice of hearing mailed to petitioner personally; order against him, without representation by counsel, held void for failure to serve attorney].

Attorney Primes said he personally advised Dunning of the time and place of hearing. At no time before the hearing, of which she had actual notice, did Dunning contact the Board, DAG Newlove or the Office of Administrative Hearings to discuss her situation. Dunning did not request a continuance after her relationship with Attorney Primes ended (Factual Finding 1).

If there were any technical deficiencies in service of the notice of hearing, they were not prejudicial because Dunning had actual notice of the time, date and place of the hearing and she was not prevented from making an appearance, either to defend herself or to request a continuance. There was substantial compliance with Government Code section 11509.

Imposing License Discipline

2. The practice of pharmacy, like the practice of medicine, is a profession. Society entrusts to persons in these professions the responsibility for control over a force which, when properly used, has great benefit for mankind, but when abused is a force for evil and human destruction. It follows that society cannot tolerate the presence of individuals within these professions who abdicate their professional responsibility and who may either negligently misdirect controlled substances or who may be used as a conduit by which these controlled substances reach the illicit market and become that force of evil. See, *Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy* (1981) 125 Cal.App.3d 19, 25.

3. The suspension or revocation of a license to engage in a profession is not penal; its purpose is to protect the public from incompetence and lack of integrity in those practicing the profession. The business of compounding prescriptions and selling drugs is intimately connected with and has a vital relationship to the health, safety, and welfare of the public. Public safety must be regarded as superior to private rights. *Brodsky v. California State Board of Pharmacy* (1959) 173 Cal.App.2d 680, 688-689.

The Standard of Proof

4. The “beyond a reasonable doubt” standard of proof does not apply in criminal probation revocation hearing. A criminal court need have only reason to believe that a probationer violated his probation or committed a new offense. See, *In re Coughlin* (1976) 16 Cal.3d 52, 56.

The standard of proof required in a proceeding involving a petition to revoke probation of a professional license should not be any higher than the standard of proof required to establish a violation of probation in a criminal matter.

The standard of proof in this petition to revoke probation is determined to be a “preponderance of the evidence” under Evidence Code section 115.

Cause Exists to Revoke Dunning’s License

5. Cause exists to revoke probation and to reimpose the order of revocation of Dunning’s Pharmacist License No. RPH 37943 that was previously stayed. A preponderance of the evidence established that while Dunning was on probation², she violated the terms and conditions of probation by failing to successfully participate in and complete the Pharmacist Recovery Program, she failed to submit timely quarterly reports to the Board as required, she failed to advise the Board of the names and addresses of her new employers, and she failed to obtain verifications from new employers acknowledging that she was on probation.

Dunning had a problem with alcohol. The Accusation alleged Dunning consumed alcoholic beverages in a manner injurious to herself and the public and on two occasions was performing the duties of a pharmacist while she was intoxicated; it also alleged Dunning’s employment was terminated on two occasions for her consumption of alcohol and Dunning was less than candid with the Board’s investigators when asked about that matter. Dunning admitted these allegations were true in order to retain her license on a probationary basis. The terms and conditions of Dunning’s probation were designed to curb Dunning’s use of alcohol, to monitor Dunning closely to insure she was not consuming alcoholic beverages, to know the identity of Dunning’s employers in order to contact those persons or entities if that were deemed necessary, and to insure Dunning’s employers knew why Dunning was on probation so an additional level of supervision might be imposed.

Dunning apparently complied with the terms and conditions of her probation from September 2001 through January 2004. Dunning participated in the Pharmacist Recovery

² Within the context of an administrative disciplinary proceeding, probation is designed to promote a licensee’s rehabilitation through a supervised program that provides assistance to the probationer while his or her conduct is monitored by the licensing agency to assure the protection of the public. To remain on probation, the errant licensee must comply with the licensing agency’s probationary program. The failure to do so prevents the licensing agency from being able to assess the probationer’s compliance with the terms and conditions of probation and determining if the public remains at risk.

Program, provided samples of bodily fluids for testing purposes as required, attended professional recovery meetings, attended 12-step meetings and provided proof of attendance, submitted quarterly reports to the Board in a timely fashion, and maintained the same employment. Sometime between January 2004 and April 2004, Dunning stopped meeting terms and conditions of her probation. She stopped calling to determine if she was required to submit a bodily fluid sample, she failed to provide about a half dozen bodily fluid samples after being requested to do so, she stopped attending professional recovery meetings, she stopped providing proof of attendance at 12-step meetings, she failed to submit quarterly reports in a timely fashion, she failed to notify the Board of the termination of her employment, and she failed to notify the Board of the identity of her new employers. This evidence strongly suggested a relapse, notwithstanding Dunning's unverified claim that she had been sick with the flu, was hospitalized, was grieving over the death of a close friend, was preoccupied by her son's despondency over financial and life issues, and was unable to attend support group meetings because her son took her car. Under the circumstances, the only measure of discipline which will meet the Board's obligation to protect the public is the revocation of Dunning's license. She has proven herself untrustworthy and ineligible to remain on probation.

This conclusion is based on Factual Findings 1-18 and on Legal Conclusions 1-4.

*Costs of Prosecution Cannot Be Awarded in a Disciplinary Matter
Revoking Probation Without Proof of a Violation of the Licensing Act*

6. Business and Professions Code section 125.3 provides in part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board . . . 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.

...

(c) . . . The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). . . .”

7. The interpretation of Business and Professions Code section 125.3 was considered in *Schneider v. Medical Board* (1997) 54 Cal.App.4th 351, where it was concluded that the statutory language “up to the date of the hearing” limited the award of attorney fees, but did not eliminate them.

8. In *Angelier v. State Board of Pharmacy* (1997) 58 Cal.App.4th 592, the Court of Appeal concluded the Legislature intended that all boards within the Department of Consumer Affairs should recover fees paid for attorney services in prosecuting disciplinary cases unless otherwise provided by subdivision (j) of section 125.3 (“This section does not apply to any board [within the Department of Consumer Affairs] if a specific statutory provision in that board’s licensing act provides for recovery of costs in an administrative disciplinary proceeding.”).

9. Neither *Schneider* nor *Angelier* involved the imposition of costs in a matter involving the revocation of probation in which a violation of the licensing act was not established. Nor does Business and Professions Code section 125.3 address that issue.

10. In this matter, the order revoking probation is an “order issued in resolution of a disciplinary proceeding before any board” against a licensee *previously* “found to have committed a violation or violations of the licensing act.” Dunning was ordered to reimburse the Board for its investigation and prosecution costs for the stipulated violations. In this matter, a violation of the licensing act was *not* established; instead, violations of the terms and conditions of probation were established.

It is concluded Business and Professions Code section 125.3 does not include statutory authority to award costs of investigation and enforcement in a disciplinary matter involving the proof of a violation of probation.

This conclusion is based on Factual Finding 20 and on Legal Conclusions 6-9.

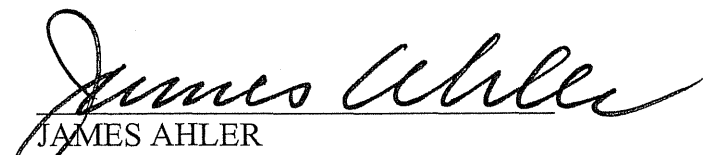
ORDER

The stay of the revocation previously imposed in Case No. 2333 entitled *In the Matter of the Accusation Against: RITA CHRISTINE DUNNING, Pharmacist License No. RPH 37943, Respondent* is vacated and the order of revocation is reinstated.

Registered Pharmacist License No. RPH 37943 issued by the California State Board of Pharmacy to Rita Christine Dunning is revoked.

DATED:

April 14, 2005


JAMES AHLER

Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Petition to Revoke the
Probation of:

RITA CHRISTINE DUNNING, R.P.H.,

Pharmacist License No. RPH 37943

Respondent.

Board of Pharmacy Case No. 2786

OAH No. L2004120291

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 June 3, 2005.

IT IS SO ORDERED.

Date: May 4, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANELY W. GOLDENBERG
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 TIMOTHY L. NEWLOVE, State Bar No. 73428
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-3034
Facsimile: (619) 645-2061
7
8 Attorneys for Complainant

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

12 In the Matter of the Petition to Revoke
13 Probation Against:

Case No. 2790

14 RITA CHRISTINE DUNNING
610 Gateway Center Way, Suite D
San Diego, California 92102

**PETITION TO REVOKE
PROBATION**

15 and

16 11312 Via La Cuesta Drive
17 San Diego, California 92131

18 Pharmacist License No. RPH 37943

19 Respondent.
20

21 The Complainant, Patricia F. Harris, for cause of Petition to Revoke Probation
22 against RITA CHRISTINE DUNNING, alleges:

23 **PARTIES**

24 1. The Complainant, Patricia F. Harris, is the Executive Officer of the
25 California State Board of Pharmacy (hereinafter the "Board"), and makes this Petition to Revoke
26 Probation solely in her official capacity.

27 2. On September 6, 1983, the Board issued Original Pharmacist License
28 Number RPH 37943 to respondent RITA CHRISTINE DUNNING (hereinafter respondent

1 "DUNNING"). At all times material herein, respondent DUNNING was and currently is licensed
2 by the Board as a registered pharmacist. The license expires on October 31, 2005, unless
3 renewed.

4 **JURISDICTION**

5 3. Complainant brings this Petition to Revoke Probation under the power
6 vested in the Board in Business and Professions Code section 4300(d) to initiate disciplinary
7 proceedings to revoke or suspend any probationary certificate of licensure for any violation of the
8 terms and conditions of probation.

9 4. Effective September 22, 2001, the Board adopted a Stipulated Settlement
10 and Disciplinary Order, which resolved an administrative disciplinary proceeding against the
11 pharmacist license held by respondent DUNNING. The proceeding was entitled In the Matter of
12 the Accusation Against: RITA CHRISTINE DUNNING, Case No. 2333. Paragraph 18 of the
13 Disciplinary Order in the Stipulated Settlement and Disciplinary Order provides as follows:

14 18. Violation of Probation

15 If respondent violates probation in any respect, the Board, after
16 giving respondent notice and the opportunity to be heard, may revoke
17 probation and carry out the disciplinary order which was stayed. If a
18 petition to revoke probation or an accusation is filed against respondent
19 during probation, the Board shall have continuing jurisdiction, and the
20 period of probation shall be extended, until the petition to revoke
21 probation is heard and decided. If a respondent has not complied with any
22 term or condition of probation, the Board shall have continuing
23 jurisdiction over respondent, and probation shall automatically be
24 extended until all terms and conditions have been met or the Board has
25 taken other action as deemed appropriate to treat the failure to comply as a
26 violation of probation, to terminate probation, and to impose the penalty
27 which was stayed.

28 **FACTS**

5. In the Stipulated Settlement and Disciplinary Order, Case No. 2333,
respondent DUNNING agreed that her pharmacist license was subject to administrative
discipline for a violation of Business and Professions Code section 4301(h) [use of alcoholic
beverages in a manner injurious to herself and to the public], Business and Professions Code
sections 4327 and 4301(o) [performing duties as a pharmacist under the influence of alcohol],

1 and Business and Professions Code section 4301(f) [commission of an act of dishonesty, fraud,
2 deceit or corruption]. Through the Stipulated Settlement, the Board acted to revoke respondent's
3 pharmacist license, stay the revocation, and place the license on probation to the Board for three
4 (3) years under specified terms and conditions.

5 6. In the Stipulated Settlement and Disciplinary Order, Case No. 2333, one
6 term of probation required respondent DUNNING to participate in a rehabilitation program:

7 Respondent's participation in the Pharmacist Recovery
8 Program is now mandatory, as of the date this decision is effective.
9 Respondent shall successfully participate in and complete her
10 current contract and any subsequent addendums with the PRP.
11 Probation shall be extended until respondent successfully
12 completes her treatment contract. (Stipulated Settlement, p. 4 ¶ 1.)

13 7. In the Stipulated Settlement and Disciplinary Order, Case No. 2333,
14 another condition of probation required respondent to submit Quarterly Reports to the Board:

15 Respondent shall report to the Board or its designee
16 quarterly. The report shall be made either in person or in writing,
17 as directed. If the final probation report is not made as directed,
18 probation shall be extended automatically until such time as the
19 final report is made. (Stipulated Settlement, pp. 4, 5 ¶ 6.)

20 8. Respondent DUNNING has failed, and continues in her failure, to provide
21 the quarterly report due on April 10, 2004, to the Board.

22 9. On or about June 14, 2004, the contractor for the Pharmacists Recovery
23 Program notified the Board, pursuant to Business and Professions Code section 4369(b), that
24 respondent DUNNING was terminated from the Diversion Program for non-compliance, and that
25 respondent represented a risk to the public as a practicing pharmacist.

26 **FIRST CAUSE FOR REVOCATION OF PROBATION**

27 (Violation of the Terms of Probation)

28 10. Complainant incorporates herein by this reference the preamble and each
of the allegations set forth in paragraphs 1 through 9 hereinabove.

11. Grounds exist to revoke probation established in the Stipulated Settlement
and Disciplinary Order, Case No. 2333, and reimpose the order of revocation of the pharmacist
license held by respondent DUNNING, in that, respondent violated the terms of her probation to

1 the Board by failing to submit the quarterly report due on April 10, 2004, as described in
2 paragraph 8 hereinabove, and through termination from the Pharmacists Recovery Program, as
3 described in paragraph 9 hereinabove.

4 **COST RECOVERY**

5 12. Business and Professions Code section 125.3 provides that, in any order
6 issued in resolution of a disciplinary proceeding before any board within the Department of
7 Consumer Affairs, the board may request the Administrative Law Judge to direct a licentiate
8 found to have committed a violation or violations of the licensing act to pay a sum not to exceed
9 the reasonable costs of the investigation and enforcement of the case.

10 13. Under Business and Professions Code section 101(d), the California State
11 Board of Pharmacy was and is a board within the Department of Consumer Affairs of the State of
12 California. Pursuant to Business and Professions Code section 125.3, Complainant hereby
13 requests the Administrative Law Judge who issues a Proposed Decision in this matter to include
14 an Order which provides for the recovery by the Board of the costs of investigation and
15 enforcement of this case against respondent DUNNING, according to proof.

16 **PRAYER**

17 WHEREFORE, Complainant prays that a hearing be held and that the California
18 State Board of Pharmacy make its order:

19 1. Revoking probation in Case No. 2333, and reimposing the Order revoking
20 Original Pharmacist License Number RPH 37943, issued to respondent RITA CHRISTINE
21 DUNNING;

22 2. Directing respondent RITA CHRISTINE DUNNING to pay to the
23 California State Board of Pharmacy the actual and reasonable costs of the investigation and
24 prosecution of the case under Business and Professions Code section 125.3, according to proof;

25 ///

26 ///

27 ///

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

3. Taking such other and further action as may be deemed proper and appropriate.

DATED: 8/23/04

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

Complainant