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Attorneys for Complainant

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

In the Matter of the Accusation Against: AMBER COLLEEN RUTAN 2621 Prescott Rd. # 80 Modesto, California 95350 Pharmacy Technician License No. TCH 42019 Respondent.	Case No. 2857 OAH No. **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 20, 2002, the Board of Pharmacy issued Pharmacy Technician License No. TCH 42019 to Amber Colleen Rutan (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein. It expired on August 31, 2005, and has not been renewed. It is currently in delinquent status.

2. On or about August 31, 2005, Complainant Patricia F. Harris, in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2857 against Respondent before the Board of Pharmacy (Board).

3. On or about September 7, 2005, Fe M. Domingo, an employee of the Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 2857, a Statement to Respondent, two copies of a Notice of Defense, a Request for Discovery, and a copy of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 2621 Prescott Rd. # 80, Modesto, California 95350. A copy of

the Accusation, the related documents, and a Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about September 30, 2005, the certified mailing of the above-listed documents was returned by the U.S. Postal Service marked "Unclaimed." A copy of the postal returned documents is attached hereto as Exhibit B, and is incorporated herein by reference.

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense [within fifteen (15) days after service of the Accusation], and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense [within the time specified] shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within fifteen (15) days after service upon her at her address of record of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2857.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A and B finds that the allegations in Accusation No. 2857 are true.

10. Total costs for investigation and enforcement in this matter are $2,893.00 as of October 7, 2005.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Amber Colleen Rutan has subjected her Pharmacy Technician License No. TCH 42019 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached as Exhibit A.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations alleged in the Accusation:

a. In violation of Business and Professions Code section 4301(f), Respondent committed numerous acts involving moral turpitude, dishonesty, fraud, deceit or corruption, including the following specific acts:

i. On or about April 14, 2004, Respondent along with two companions were apprehended by Livermore (California) Police. Respondent was in possession of tablets of **Vicodin (APAP with hydrocodone)** for which she admitted she did not have a prescription, photocopied (counterfeit) fifty-dollar bills, an electronic scale and small knife.

ii. On or about April 21, 2004, Respondent was arrested by San Leandro (California) Police pursuant to Vehicle Code section 10851(a) [theft / unlawful driving or taking of a vehicle], a felony.

iii. On or about July 13, 2004, Respondent was arrested by Livermore Police pursuant to Health and Safety Code section 11550(a) [using or being under influence of controlled substances], a misdemeanor, and Vehicle Code section 23152(a) [driving under the influence of alcohol and/or drugs], a misdemeanor.

iv. During and/or subsequent to her July 13, 2004 arrest, Respondent admitted to the arresting officer(s) that she had ingested **methamphetamine** earlier in the day, and that she was "trying to quit." She admitted to using **methamphetamine** "every other day." She further admitted to being a current user of **marijuana**, and also admitted to being addicted to one or more drugs. A urine sample taken from Respondent during her arrest tested positive for **methamphetamine** and **marijuana**.

v. On or about July 14, 2004, Respondent along with two companions were apprehended by Livermore Police. Respondent was in possession of a glass pipe with brown and white resin. Respondent admitted that she had been using that pipe "for one week" to smoke **methamphetamine**. She admitted being addicted to **methamphetamine**.

vi. On or about August 18, 2004, on the basis of her July 13, 2004 arrest, in a criminal proceeding entitled *People v. Amber Colleen Rutan*, Case No. 112938 in Alameda County Superior Court-Pleasanton, Respondent was charged by criminal Complaint under Vehicle Code section 23152(a) [driving under the influence of drugs], a misdemeanor, and Health and Safety Code section 11550(a) [using/being under influence of controlled substances], a misdemeanor, for use of **methamphetamine**. On or about September 22, 2004, Respondent failed to appear in court in Case No. 112938. A bench warrant was issued for her arrest.

vii. On or about September 9, 2004, Respondent along with one companion were apprehended by Livermore Police. Respondent was in possession of two glass pipes with off-white crystalline and burn residue. Respondent admitted to using the glass pipe(s) to smoke **methamphetamine** that same day.

b. In violation of Business and Professions Code sections 4301(h), (j), and/or (o), and/or Health and Safety Code section 11170, Respondent, as described in paragraph 4(a) above, unlawfully administered to herself **methamphetamine** and **marijuana**, each of which is a dangerous drug and a controlled substance.

c. In violation of Business and Professions Code sections 4301(j), (o), and/or 4060, Respondent, as described in paragraph 4(a) above, possessed, conspired to possess, and/or assisted in or abetted the possession of **Vicodin**, **methamphetamine** and/or **marijuana**, all controlled substances, without valid prescriptions.

d. In violation of Business and Professions Code sections 4301(j), (o), and/or Health and Safety Code section 11350, Respondent, as described in paragraph 4(a) above, possessed, conspired to possess, and/or assisted in or abetted possession of **Vicodin (APAP with hydrocodone)**, a narcotic controlled substance, without a valid prescription.

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e. In violation of Business and Professions Code section 4301, Respondent engaged in unprofessional conduct by way of the foregoing acts.

ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 42019, heretofore issued to Respondent Amber Colleen Rutan, is REVOKED.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined by statute.

This Decision shall become effective on December 23, 2005.

It is so ORDERED November 23, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

40065841.wpd
DOJ docket number:SF2005200199

By

STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2857, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents

Exhibit A

Accusation No. 2857,
Related Documents and Declaration of Service

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

In the Matter of the Accusation Against: AMBER COLLEEN RUTAN 2621 Prescott Rd. # 80 Modesto, California 95350 Pharmacy Technician License No. TCH 42019 Respondent.	Case No. 2857 OAH No. **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 20, 2002, the Board of Pharmacy issued Pharmacy Technician License Number TCH 42019 to Amber Colleen Rutan (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2005, unless renewed.

JURISDICTION

3. This Accusation 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.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

. . .

"(f) The commission of 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 or not.

. . .

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

. . .

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

. . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

. . .

8. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife, a nurse practitioner, or a physician assistant.

10. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

11. Health and Safety Code section 11350, in pertinent part, makes it unlawful for any person to possess any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon a written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

13. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

14. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

. . .

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

15. **APAP with hydrocodone** is a common designation for a compound of acetaminophen (APAP) and **hydrocodone bitartrate**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and a dangerous drug as designated by Business and Professions Code section 4022, intended for pain relief. This compound is also know by the brand name **Vicodin®**. It is a narcotic analgesic drug.

16. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.

17. **Methamphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

FACTUAL BACKGROUND

18. On or about April 14, 2004, Respondent along with two companions were apprehended by Livermore (California) Police. Respondent was in possession of several tablets of **Vicodin** (**APAP with hydrocodone**) for which she admitted she did not have a prescription, photocopied (counterfeit) fifty-dollar bills, and an electronic scale and small folding knife.

19. On or about April 14, 2004, Respondent was arrested on charges that she violated Penal Code section 476 [possession of fictitious bills/currency], a felony, and Health and Safety Code section 11350(a) [possession of narcotic controlled substance], also a felony.

20. The District Attorney declined to file charges against Respondent on the basis of her April 14, 2004 arrest, in an exercise of prosecutorial discretion.

21. On or about April 21, 2004, Respondent was arrested by the San Leandro (California) Police on charges that she violated Vehicle Code section 10851(a) [theft / unlawful driving or taking of a vehicle], a felony. On or about April 22, 2004, in a criminal case entitled *People v. Amber Colleen Rutan*, Case No. 3742313 in Alameda County Superior Court-Hayward, Respondent was charged by criminal Complaint with violating Vehicle Code section 10851(a) [theft / unlawful driving or taking of a vehicle], a felony. On or about May 4, 2004, the charge(s) against Respondent were dismissed pursuant to plea by the District Attorney.

22. On or about July 13, 2004, Respondent was arrested by Livermore Police on charges that she violated Health and Safety Code section 11550(a) [using or being under influence of controlled substances], a misdemeanor, and Vehicle Code section 23152(a) [driving under the influence of alcohol and/or drugs], a misdemeanor.

23. During and subsequent to her July 13, 2004 arrest, Respondent admitted to the arresting officer(s) that she had ingested **methamphetamine** earlier in the day, and that she was "trying to quit." She admitted to using **methamphetamine** "every other day." She further admitted to being a current user of **marijuana**, and also admitted to being addicted to drugs. A urine sample taken from Respondent tested positive for **methamphetamine** and **marijuana**.

24. On or about July 14, 2004, Respondent along with two companions were apprehended by Livermore Police. Respondent was in possession of a glass pipe with brown and white resin. Respondent admitted that she had been using that pipe "for one week" to smoke **methamphetamine**. She admitted being addicted to **methamphetamine**. Livermore Police issued Respondent a Notice to Appear for violation of Health and Safety Code section 11364 (possession of drug paraphernalia), a misdemeanor. The appearance date was August 16, 2004.

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25. On or about August 18, 2004, on the basis of her July 13, 2004 arrest, in a criminal proceeding entitled *People v. Amber Colleen Rutan*, Case No. 112938 in Alameda County Superior Court-Pleasanton, Respondent was charged by criminal Complaint under Vehicle Code section 23152(a) [driving under the influence of drugs], a misdemeanor, and Health and Safety Code section 11550(a) [using or being under influence of controlled substances], a misdemeanor, for use of **methamphetamine**.

26. On or about September 9, 2004, Respondent along with one companion were apprehended by Livermore Police. Respondent was in possession of two glass pipes with off-white crystalline and burn residue. Respondent admitted to using the glass pipe(s) to smoke **methamphetamine** that same day. Livermore Police issued Respondent a Notice to Appear for violation of Health and Safety Code section 11364 (possession of drug paraphernalia), a misdemeanor. The appearance date was "within 30 days" of issuance of the Notice to Appear.

27. On or about September 22, 2004, Respondent failed to appear for a court hearing in Case No. 112938. A bench warrant was issued for her arrest. It remains outstanding.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

28. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 18-27 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Self-Administration of Dangerous Drugs / Controlled Substances)

29. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 18-27 above, unlawfully administered to herself **methamphetamine** and **marijuana**, each of which is a dangerous drug and a controlled substance.

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THIRD CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 18-27 above, possessed, conspired to possess, and/or assisted in or abetted the possession of **Vicodin**, **methamphetamine** and/or **marijuana**, all controlled substances, without valid prescriptions.

FOURTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Narcotic Controlled Substance)

31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11350, in that, as described in paragraphs 18-27 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of **Vicodin**, a narcotic controlled substance, without a valid prescription.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

32. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 18-27 above, engaged in unprofessional conduct.

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 Pharmacy Technician License Number TCH 42019, issued to Amber Colleen Rutan.

B. Ordering Amber Colleen Rutan 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 is deemed necessary and proper.

DATED: 8/31/05

P. F. Harris

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

SF2005200199

20021793.wpd

Exhibit B

Postal Return Documents

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

J. Room

SEP 15 2005

RETURNED TO SENDER

UNCLAIMED

ED MAIL

7160 3901 9848 5186 8501

RETURN RECEIPT REQUESTED

AMBER COLLEEN RUTAN
2621 Prescott Rd. #80
Modesto, CA 95350

FINAL NOTICE

9-25

SAN FRANCISCO CA 09-07-05

neopost

U.S. POSTAGE

$5.10

METER 950941