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

10 In the Matter of the Accusation Against:

11 AMBER COLLEEN RUTAN
12 2621 Prescott Rd. # 80
13 Modesto, California 95350
14 Pharmacy Technician License No. TCH 42019
15 Respondent.

Case No. 2857

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

16 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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DETERMINATION OF ISSUES

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

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

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

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

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

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

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

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

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

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

5 vi. On or about August 18, 2004, on the basis of her July 13,
6 2004 arrest, in a criminal proceeding entitled *People v. Amber Colleen Rutan*, Case No. 112938
7 in Alameda County Superior Court-Pleasanton, Respondent was charged by criminal Complaint
8 under Vehicle Code section 23152(a) [driving under the influence of drugs], a misdemeanor, and
9 Health and Safety Code section 11550(a) [using/being under influence of controlled substances],
10 a misdemeanor, for use of **methamphetamine**. On or about September 22, 2004, Respondent
11 failed to appear in court in Case No. 112938. A bench warrant was issued for her arrest.

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

16 b. In violation of Business and Professions Code sections 4301(h), (j),
17 and/or (o), and/or Health and Safety Code section 11170, Respondent, as described in paragraph
18 4(a) above, unlawfully administered to herself **methamphetamine** and **marijuana**, each of
19 which is a dangerous drug and a controlled substance.

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

24 d. In violation of Business and Professions Code sections 4301(j), (o),
25 and/or Health and Safety Code section 11350, Respondent, as described in paragraph 4(a) above,
26 possessed, conspired to possess, and/or assisted in or abetted possession of **Vicodin (APAP with**
27 **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.

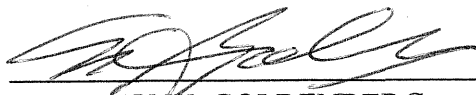
Pursuant to Government Code section 11520, subdivision (c), Respondent may
serve a written motion requesting that the Decision be vacated and stating the grounds relied on
within seven (7) days after service of the Decision on Respondent. The agency in its discretion
may vacate the Decision and grant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

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
5 Facsimile: (415) 703-5480
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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

| | |
|--|-------------------|
| 10 In the Matter of the Accusation Against: | Case No. 2857 |
| 11 AMBER COLLEEN RUTAN | OAH No. |
| 12 2621 Prescott Rd. # 80 | ACCUSATION |
| 13 Modesto, California 95350 | |
| 14 Pharmacy Technician License No. TCH 42019 | |
| 15 Respondent. | |

16 Complainant alleges:

17 PARTIES

- 18 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
19 official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about June 20, 2002, the Board of Pharmacy issued Pharmacy
21 Technician License Number TCH 42019 to Amber Colleen Rutan (Respondent). The Pharmacy
22 Technician License was in full force and effect at all times relevant to the charges brought herein
23 and will expire on August 31, 2005, unless renewed.

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.
28

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

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

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

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

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

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

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Possession of Controlled Substances)

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

7
8 FOURTH CAUSE FOR DISCIPLINE

9 (Unlawful Possession of Narcotic Controlled Substance)

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

14
15 FIFTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct)

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

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21 PRAYER

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

24 A. Revoking or suspending Pharmacy Technician License Number TCH
25 42019, issued to Amber Colleen Rutan.

26 B. Ordering Amber Colleen Rutan to pay the Board of Pharmacy the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

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

DATED: 8/31/05

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

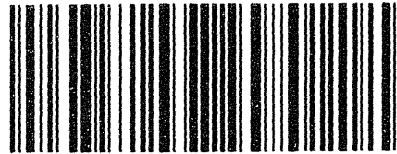
SF2005200199

20021793.wpd

Exhibit B
Postal Return Documents

REGISTERED MAIL

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



7160 3903 9848 5186 8501

RETURN RECEIPT REQUESTED

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

FINAL NOTICE

9-25

J. Room

RECEIVED

SEP 15 2005



UNCLAIMED

