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

In the Matter of the Accusation Against: LISA MARIE RYSTAD, Respondent.	Case No. 2878 OAH No. N2005100199

PROPOSED DECISION

Administrative Law Judge Muriel Evens, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on March 6, 2006.

Lorrie M. Yost, Deputy Attorney General, represented complainant Patricia F. Harris.

Respondent was present and represented herself.

The matter was submitted on March 15, 2006, following the receipt of additional evidence.

FACTUAL FINDINGS

1. Complainant Patricia F. Harris filed the accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy.

2. On July 10, 2001, the Board issued Original Pharmacy Technician Registration Number TCH 37515 to respondent Lisa Marie Rystad. That registration is in full force and effect until November 30, 2006.

3. On or about November 16, 2004, respondent was convicted in the Superior Court, County of Sacramento, on her plea of nolo contendere to violating Penal Code section 487, subdivision (b)(3) (taking money from an employer in an amount exceeding $400), a felony and crime of moral turpitude. Imposition of judgment and sentence was suspended and respondent placed on formal probation for a period of five years with terms and conditions, including serving 120 days in jail, with a recommendation for 60 days Sheriff

Work Project and 360 hours in the Alternative Sentencing Program. In addition, respondent was ordered to pay restitution of $6785.92. Respondent has paid the restitution in full and is

completing her community service hours. Pursuant to her plea agreement, the felony conviction was reduced to a misdemeanor following payment of the restitution.

The facts and circumstances are that respondent and some coworkers at Walgreens diverted customer proceeds from the company's "Senior Dividend Program" to their own benefit. Customers would receive a rebate, added to a "dividend" card, of ten percent of cash prescription purchases. If the customer left the dividend card, respondent would use the card to purchase store products or gift cards for other businesses, which were sold at Walgreens.

4. Respondent was having financial problems at the time she began taking the dividend cards. As she was in charge of the family finances, she was ashamed to tell her husband. She and her husband have one child at home, as well as three cousins they took in nine years ago. Her husband now handles the household finances, which are now in an acceptable condition after the help of extended family.

Respondent sees a counselor and has returned to her church. She seems sincerely remorseful, recognizing how she hurt the senior citizens she served, by taking their money and violating their trust, as well as others.

5. Respondent is currently a temporary employee for Healthnet, working with the approval of medications outside the formulary. She has no access to money or contact with patients. If she remains on the job two more months, the job will become permanent. Healthnet requires a license for the persons doing this work.

6. The Board submitted a certification of costs totaling $3103.25.

LEGAL CONCLUSIONS

1. Grounds exist for discipline of respondent's registration pursuant to Business and Professions Code section 4301, subdivision (f) (commission of an act of moral turpitude), by reason of Finding 3.

2. Pursuant to Business and Professions Code section 125.3, the Board's certification of costs of $3103.25 is reasonable.

3. Respondent is complying with the terms of her probation and has paid the ordered restitution in full. She showed sincere remorse and is not likely to repeat the conduct. Her current employment does not include contact with money or patients. She has shown some rehabilitation and is a proper candidate for a probation registration.

ORDER

Technician registration number TCH 37515 issued to Lisa Marie Rystad is revoked; however, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Respondent shall be suspended from working as a pharmacy technician until she is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the board.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, **or** be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Subject to the above restrictions, respondent may continue to own or hold an interest in any entity licensed by the board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

2. Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

3. Respondent shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

4. Upon receipt of reasonable notice, respondent shall appear in person for interviews with the board upon request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.

5. Respondent shall cooperate with the board's inspectional program and in the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.

6. Respondent shall notify all present and prospective employers of the decision in case number 2878 and the terms, conditions and restrictions imposed on respondent by the decision.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his or her employer to report to the board in writing acknowledging the employer has read the decision in case number 2878.

Respondent shall not work in a pharmacy or other facility with direct patient contact, unless approved in advance by the board. If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the decision in case number 2878 in advance of the respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether the respondent is considered an employee or independent contractor.

7. Respondent shall pay to the board its costs of investigation and prosecution in the amount of $3103.25. Respondent shall make said payments on a schedule arranged with the board.

If respondent fails to pay the costs as specified by the board and on the date(s) determined by the board, the board shall, without affording the respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

8. Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

9. Respondent shall, at all times while on probation, maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.

If respondent's technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. Respondent shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule, if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

It is a violation of probation for respondent to work less than 20 hours per month as a pharmacy technician/exemptee. Should respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, respondent must no-

tify the board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

"Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of a pharmacy technician.

12. If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation 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 or accusation is heard and decided.

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

13. Upon successful completion of probation, respondent's technician registration will be fully restored.

14. Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

DATED: April 13, 2006

MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: LISA MARIE RYSTAD 4113 Whitney Avenue Sacramento, CA 95821 Respondent.	File No. 2878 OAH No. N2005100199

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 June 15, 2006.

IT IS SO ORDERED May 16, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

In the Matter of the Accusation Against: LISA MARIE RYSTAD 4113 Whitney Ave. Sacramento, CA 95821 Original Pharmacy Technician Registration No. TCH 37515 Respondent.	Case No. 2878 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about July 10, 2001, the Board of Pharmacy issued Original Pharmacy Technician Registration Number TCH 37515 to Lisa Marie Rystad (Respondent). The original pharmacy technician registration was in effect at all times relevant to the charges brought herein and will expire on November 30, 2006, unless renewed.

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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 4300 of the Code provides, in pertinent part, that:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

. . . . . .

5. 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 or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not 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.

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"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

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6. 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."

7. Section 125.3 of the Code states, in pertinent part, that 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.

CAUSE FOR DISCIPLINE

(Conviction of a Crime of Moral Turpitude)

8. Respondent is subject to disciplinary action under section 4301(f) in that on or about November 16, 2004 Respondent was convicted of violating Penal Code section 487(b)(3) (taking money from an employer in an amount exceeding $400.00, a felony), a crime of moral turpitude, in the action known as People v. Lisa Marie Rystad, Superior Court of California, County of Sacramento, Case No. 04F06744. The circumstances are that Respondent manipulated the information for 347 customers of the Walgreen Pharmacy where she worked in order to create over $18,000.00 worth of Walgreen gift cards for herself.

CAUSE FOR DISCIPLINE

(Conviction of a Crime of Substantially Related to the Duties of a Licensee)

9. Respondent is subject to disciplinary action under section section 4301(l) in that on or about November 16, 2004 Respondent was convicted of a crime substantially related to the duties and functions of a pharmacy technician as described in paragraph 8, above.

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 Original Pharmacy Technician Registration Number TCH 37515, issued to Lisa Marie Rystad.

B. Ordering Lisa Marie Rystad 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: 7/7/05

P. F. Harris

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

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