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

In the Matter of the Accusation Against: JAMISA JAVETTE LAWSON, Pharmacy Technician Registration No. TCH 43681 Respondent.	Case No. 2881 OAH No. N2006030343

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 10, 2006.

Kim M. Settles, Deputy Attorney General, represented complainant.

Louis E. Duvernay, Attorney at Law, represented respondent, who was present.

The matter was submitted on May 10, 2006.

FACTUAL FINDINGS

1. Patricia F. Harris made this accusation in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On October 31, 2002, the Board issued Pharmacy Technician Registration Number TCH 43681 to Jamisa Javette Lawson (respondent). The license is in full force and effect until June 30, 2006, unless otherwise renewed.

3. It was not established by clear and convincing evidence that on August 30, 2004, respondent was in possession of cocaine.

4. Respondent was arrested on August 30, 2004, for possession of cocaine. Two officers who were on patrol saw an individual that they knew to be on probation for a narcotics offense. He was in the driver's seat of respondent's vehicle and respondent was standing outside of the vehicle. The officers had this individual exit the vehicle and they searched him at the scene and he did not have suspected drugs in his possession. The

officers released him. The officers saw respondent go into the vehicle to retrieve her purse. They found three small packages of white powder – one on the ground, one in respondent's hand and one in her purse. One of the packets they saw respondent discard, one was in her hand and one was in her purse. Respondent testified that she was getting her purse to make sure it was not stolen. She saw the white powder and panicked. She was not sure what it was, but suspected the person in her vehicle had put them in her purse to avoid having them in his possession when the police searched him. It was specifically noted by the officer that respondent did not appear to be under the influence of any drugs.

5. There was no evidence presented that the white powder was actually a controlled substance of any kind. Respondent was counseled by her public defender to take an offer of criminal diversion, which she did. She was required to attend NA meetings, pay a fee of $100 and be tested for drugs every other week. Respondent complied with the terms of her diversion and successfully complete the program on July 20, 2005. Respondent's diversion is not a conviction and the fact that she was on diversion cannot be used to prove that she was in possession of a controlled substance. Further, upon successful completion of a diversion program, the arrest upon which the diversion was based is deemed to have never occurred. The arrest record, including the arrest report, cannot be used in any way which could result in the denial of any employment, benefit, license, or certificate.[1]

6. The offense of possession of a controlled substance was not independently proven by the Board. No evidence was presented that the small packets contained a controlled substance. No inference can be made that they were drugs from the police report or the fact that respondent participated in a diversion program. The accusation in the matter must be dismissed.

7. Cost recovery was requested. However, since the matter must be dismissed, no cost recovery is warranted.

LEGAL CONCLUSIONS

1. By reason of the matters set forth above, cause does not exist for disciplinary action pursuant to Business and Professions Code section 4301, subdivision (j) (possession of controlled substance.)

2. By reason of the matters set forth in Finding 7, no cost recovery is warranted pursuant to Business and Professions Code section 125.3.

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[1] See Penal Code section 1001.9.

ORDER

The accusation against Jamisa Javette Lawson, Pharmacy Technician Registration No. TCH 43681, is hereby dismissed.

DATED: May 17, 2006

RUTH S. ASTLE
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: JAMISA JAVETTE LAWSON Pharmacist Technician Registration No. TCH 43681 Respondent.	Case No. 2881 OAH No. N2006030343

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 30, 2006.

It is so ORDERED on May 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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Board President

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

In the Matter of the Accusation Against: JAMISA JAVETTE LAWSON 1084 30th Street Oakland, CA 94608 Pharmacy Technician Registration No. TCH 43681 Respondent.	Case No. 2201 **ACCUSATION**

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 October 31, 2002, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 43681 to Jamisa Javette Lawson (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 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 4301 of the Code states:

"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:

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

5. Section 4060 of the Code states:

"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 pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices."

6. Health and Safety Code section 11350(a) provides, in pertinent part, that every person who possesses any controlled substance specified in subdivision (b) or (c) of Section 11055, unless upon written prescription shall be punished by imprisonment in the state prison.

7. 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 or

violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUG

8. **"Cocaine"** is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(6) and a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE
(B&P Code Section 4301(j))
(Possession of Controlled Substance)

9. Respondent is subject to disciplinary action under section 4301(j) of the Code in that respondent violated state statutes regulating controlled substances to wit: Business and Professions Code section 4060 and Health and Safety Code section 11350(a) by unlawfully possessing cocaine on or about August 30, 2004. The circumstances are as follows:

10. On or about August 30, 2004, respondent was arrested after two Oakland Police Officers approached respondent outside her vehicle at the 1300th block of East 17th Street, in Oakland, CA. As respondent saw the officers, she discarded a plastic twist of powder cocaine. The officer recovered the twist of cocaine on the sidewalk and recovered two additional twists of cocaine from respondent's clinched hand and purse.

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 Registration Number TCH 43681, issued to Jamisa Javette Lawson;

B. Ordering Jamisa Javette Lawson 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;

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

DATED: 11/10/05

P. F. Harris

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

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