BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	
HEATHER SCHUTT McGINNIS,	Case No. 2905
Pharmacy Technician License No. TCH 46453	OAH No. N2006010082
Respondent.	

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on April 19, 2006.

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

Robert F. Hahn, Attorney at Law, Law Offices of Gould & Hahn, represented respondent, who was present.

Submission of the matter was deferred to April 20, 2006, for receipt of legible copies of two documents, which were received and considered. The matter was submitted on April 20, 2006.

FACTUAL FINDINGS

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

2. On October 21, 2003, the Board of Pharmacy issued Pharmacy Technician License Number TCH 46453 to Heather Schutt McGinnis (respondent). The license will expire on October 31, 2006, unless renewed.

3. On January 2, 2004, respondent used and was under the influence of a controlled substance, to wit: methamphetamine. The factual circumstances involved an enforcement stop by an El Cerrito Police Officer for an expired vehicle registration. The officer observed that respondent was under the influence of a controlled substance and arrested her for a violation of Health and Safety Code section 11550, subdivision (a). A toxicology report indicated that respondent tested positive for methamphetamine.

4. Respondent pled "no contest" to a violation of Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance). On March 30, 2005, judgment was deferred for 18 months and respondent is required to participate in a drug diversion program. If she completes diversion successfully, the charges against her will be dismissed. Respondent's conduct that lead to her arrest does not constitute commission of acts involving moral turpitude, dishonesty, or corruption. Respondent did initially lie to the police officer when he asked her if she was under the influence of drugs. However, she cooperated with the police completely in the investigation of her offense. Her acts do constitute do constitute a violation of Business and Professions Code section 4301, subdivision (j) in that she violated a statute regulating controlled substances/dangerous drugs by the personal use of methamphetamine without a valid prescription.

5. Respondent entered a drug diversion program in March 2006. Respondent admitted that she continued to use methamphetamine until February 2006. She has been clean for only two months. Respondent expresses determination to succeed in continuing not to use methamphetamine. However, she understands that she has an addictive personality. She has been using methamphetamines since she was 14 years old (about 1967) when it was prescribed for her for weight control. Respondent also admitted that she needed about two years of drug free living before she would be secure in her recovery.

6. Respondent had an alcohol problem in the past. However she has abstained from the use of alcohol since 1995. She attends NA meetings every day. She is on step one of a 12-step program. She does not have a sponsor.

7. Respondent has had various short-term employment over the years including home health care and working at Home Depot for a year. She is presently employed as a home health care worker. Her client testified that she is a reliable attendant and helps her with her shopping, doctor appointments and personal care needs.

8. Respondent completed her BA degree in integrative biology in 2002. She is interested in pursuing a career in health care, but has been unable to gain admittance to a program.

9. Respondent's 22-year old son testified that his mother is serious about her recovery. She is helping him remodel a house that he owns. Respondent is living in that house at this time. Respondent also presented five letters of reference. Two were from the woman for which she provides care. She is a reliable, competent, and caring person. She enjoys helping people.

10. Respondent worked as a Pharmacy Technician for one month in April/May, 2005. She felt that she was not competent to do the job.

11. Respondent has only been in recovery for a very short time. While she appears to be committed to making it work, her time in recovery is miniscule in comparison

to a history of 30 years of abuse. Respondent needs more time to demonstrate that she is rehabilitated. It would not be in the public interest to allow respondent to be licensed as a pharmacy technician at this time.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3 and 4, cause for disciplinary action exists pursuant to Business and Professions Code section 4301, subdivision (j) (violation of statute regulating controlled substances/dangerous drugs).

2. By reason of the matters set forth in Findings 3 and 4, cause for disciplinary action does not exist pursuant to Business and Profession Code section 4031, subdivision (f) (acts involving moral turpitude). Respondent's abuse of methamphetamine is an illness; it is not an act involving moral turpitude, dishonesty or corruption.

3. The matters set forth in Findings 5 through 11 have been considered in making the following order. It would not be in the public interest to allow respondent to be licensed as a pharmacy technician at this time.

ORDER

Pharmacy Technician License No. TCH 46453 issued to Heather Schutt McGinnis is hereby revoked pursuant to Legal Conclusion 1.

DATED: April 25, 2006

Ruth S. Astle

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: HEATHER SCHUTT McGINNIS Pharmacist Technician Registration No. TCH 46453 Respondent.	Case No. 2905 OAH No. N2006010082

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 21, 2006.

It is so ORDERED on May 22, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

BILL LOCKYER, Attorney General
of the State of California
KIM M. SETTLES, State Bar No. 116945
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2138
Facsimile: (510) 622-2270

Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 2905
HEATHER SCHUTT McGINNIS 6940 Balsam Way Oakland, CA 94611 Pharmacy Technician License No. TCH 46453 Respondent.	**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.

2. On or about October 21, 2003, the Board of Pharmacy issued Pharmacy Technician License Number TCH 46453 to HEATHER SCHUTT McGINNIS (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2006, unless renewed.

JURISDICTION

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

STATUTES

4. Business and Professions Code section 118(b) provides that the Board retains jurisdiction to institute disciplinary proceedings after the expiration or forfeiture of a license by operation of law, during any period in which it may be renewed.

5. Business and Professions Code section 4300 provides that every license issued by the Board may be suspended or revoked.

6. Business and Professions Code section 4301 provides in pertinent part that the Board shall take action against any holder of a license or permit who is guilty of unprofessional conduct. Unprofessional conduct shall include, but is not limited to:

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

7. Health and Safety Code section 11550(a) provides in pertinent part, that it is unlawful to use or be under the influence of a controlled substance.

DRUGS

8. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2).

CAUSES FOR DISCIPLINE

9 . Respondent is subject to disciplinary action pursuant to Business and Professions Code section 4301(j) in that she violated Health and Safety Code section 11550(a) because on or about January 2, 2004, respondent used and was under the influence of a controlled substance, to wit: methamphetamine. The factual circumstances involved an enforcement stop by an El Cerrito Police Officer for an expired vehicle registration, wherein respondent was observed by the officer to be under the influence of a controlled substance and was arrested for violation of Health and Safety Code section 11550(a). A search of respondent's vehicle revealed

a baggie with approximately 5 syringes in a backpack and the occupant had a smoking glass pipe, tourniquet, and a metal spoon with white residue in his pants pocket. A toxicology report indicated that respondent tested positive for methamphetamine.

10. Subsequent to respondent's above-referenced arrest, respondent pled no contest to violation of Health and Safety Code section 11550(a) in connection with the above-referenced incident and was granted deferred entry of judgment (for 18 months) on or about March 30, 2005, pursuant to Penal Code section 1000.3, in *People v. Heather Schutt McGinnis* Contra Costa County Superior Court, Case No. 282278-1.

11. Respondent is subject to disciplinary action pursuant to Business and Professions Code section 4301(f) by virtue of the conduct alleged in paragraph 9 above, in that said conduct reflects the commission of acts involving moral turpitude, dishonesty, and corruption.

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:

1. Revoking or suspending Pharmacy Technician License Number TCH 46453, issued to HEATHER SCHUTT McGINNIS;

2. Ordering HEATHER SCHUTT McGINNIS 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;

3. 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
State of California
Complainant

03583110SF2005900281
90028729.wpd
gj 10/20/05