

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

In the Matter of the Accusation Against:

YOLANDA S. CASTRO
1692 W. Victoria St.
San Bernardino, CA 92411

Pharmacy Technician Registration
No. TCH 30657,

Respondent.

Case No. 2958

OAH No. L2007050174

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 November 8, 2007.

IT IS SO ORDERED.

Date: October 9, 2007

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


WILLIAM POWERS
Board President

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PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Bernardino, California on August 1, 2007.

Deputy Attorney General Stephen A. Mills represented complainant.

Yolanda S. Castro (respondent) personally appeared and was represented by Mark R. McDonald, Esq.

Oral and documentary evidence was received and the matter was submitted on August 1, 2007.

FACTUAL FINDINGS

1. The Accusation against respondent was filed by Patricia F. Harris (complainant), while acting in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (the board).

2. Respondent suffered criminal convictions on March 16, 2006, as described in finding 9, below. Consequently, on June 15, 2007, a First Supplemental Accusation was

filed by Virginia Herold (complainant), while acting in her official capacity as the Executive Officer of the board.

3. On September 10, 1999, the board issued Pharmacy Technician Registration number TCH 30657 to respondent. At all relevant times, respondent's registration was, and currently is, in full force and effect.

4. During late October of 2004, the Pharmacy Services Manager/Pharmacist in Charge (manager) of the Riverside 24 Hour Outpatient Pharmacy, a Kaiser Permanente facility located at 10800 Magnolia Avenue in Riverside, California (the facility), was notified that the quantity of certain controlled substances ordered by the facility did not correspond with the inventory and/or the records reflecting the dispensing of those controlled substances. Specifically, it appeared that the facility was "ordering more Vicodin ES than there were prescriptions being filled."¹ It was apparent to the manager of the facility that certain drugs were being stolen or "diverted." Consequently, the manager notified the facility's Internal Auditors (the auditors).

5. On January 10, 2005, the auditors installed covert cameras and recording devices to monitor the sections of the facility where the controlled substances/dangerous drugs in question were shelved (the shelves).

6. The cameras and recording devices revealed the following relevant activity from January 15, 2005 through May 3, 2005:

a. On January 15, 2005, at 6:21 p.m., respondent removed three containers of Lortab² and one container of Vicodin ES from the shelves.³ A records check revealed that the drugs were never dispensed nor were they returned to the shelves.

b. On January 15, 2005, at 9:09 p.m., respondent removed three containers of Vicodin ES from the shelves. A records check revealed that the drugs were never dispensed nor were they returned to the shelves.

c. On February 27, 2005, at 7:00 p.m., respondent removed three containers of Lortab and one container of Vicodin ES from the shelves. A records check revealed that the drugs were never dispensed nor were they returned to the shelves.

¹ "Vicodin ES" is a brand name for tablets containing hydrocodone and acetaminophen. Hydrocodone and acetaminophen are designated and classified as Schedule III controlled substances and dangerous drugs pursuant to Health and Safety Code sections 11056, subdivision (e)(4) and 4022.

² "Lortab," like Vicodin ES, is a brand name for tablets containing hydrocodone and acetaminophen.

³ According to the manager, each container/bottle of Vicodin ES and Lortab contains 100 tablets.

d. On March 20, 2005, at 7:52 p.m., respondent removed one container of Vicodin ES from the shelves. A records check revealed that the drugs were never dispensed nor were they returned to the shelves.

e. On April 16, 2005, at 6:40 p.m., respondent removed three containers of Vicodin ES from the shelves and placed them in a box. A records check revealed that the drugs were never dispensed nor were they returned to the shelves.

7. On May 3, 2005, after reviewing the video evidence described in findings 6a, b, c, d, and e, the auditors interviewed respondent. During the interview respondent admitted stealing the drugs she was videotaped taking from the shelves. Later, in a May 5, 2005 letter, respondent stated, in pertinent part:

"I'd like to make a full disclosure of what happened. My stepsister had a prescription addiction problem related to carpal tunnel (sic) problems. I made a mistake in judgment and felt empathy for her as well as wanting to help her. To be quite honest I dishonestly took some controlled medications from the pharmacy for her. I knew I would regret it. I took the medication about once or twice a month. I couldn't honestly tell you how much medication I took exactly, but I can say it occurred on more than one occasion. For whatever it is worth, I'd like to say that I am very regretful for my actions . . . I understand my (sic) consequences and I understand that I can be terminated. If I end up being terminated, I'd like to mention that I'd pay for the cost of the medication[s] and ask if I can voluntarily resign. I hope to keep my job. (Exhibit 6.)"

8. Respondent resigned her job pending termination. Subsequently, on November 17, 2005, a felony complaint was filed against respondent in the Riverside County Superior Court.

9. On March 13, 2006, respondent was convicted, in Riverside County Superior Court, after entry of her guilty pleas, of one count of violating California Health and Safety Code section 11351 (willful and unlawful possession for sale and purpose of sale of a controlled substance, to wit: hydrocodone) and one count of violating Penal Code section 487, subdivision (a) (willful and unlawful taking of personal property of a value exceeding four hundred dollars, to wit: hydrocodone), felonies which are directly and substantially related to the qualifications, functions and duties of a licentiate/registrant.

10. As a result of respondent's March 13, 2006 convictions, respondent was placed on three years of formal probation. At the time of the instant hearing respondent still had approximately two years of probation to complete.

11. An audit of the facility's drugs reveals that over the ten-month period ending April of 2005, 400 containers/bottles containing hydrocodone were missing from the facility

and were unaccounted for. Four hundred (400) containers/bottles represent 40,000 individual tablets.

12. Respondent testified in conformity with her "To whom it may concern" letter dated May 5, 2005 (Exhibit 6). Respondent admitted stealing 13 bottles/containers of medicines containing hydrocodone; however, she denies taking anywhere near 400 bottles/containers of medicines. According to respondent, other employees regularly stole medicines from the facility.

13. The evidence presented was insufficient to prove that respondent stole more than 13 bottles/containers or 1,300 tablets of controlled substances/dangerous drugs from the facility. However, theft of even one tablet alone constitutes unprofessional conduct and forms the basis for discipline, as more fully described in the Legal Conclusions section, below.

14. Respondent presented three character reference letters, and a July 25, 2007 letter from Flavia C. Jorge, Ph.D., in support of her claim that notwithstanding the theft of drugs described in the previous factual findings, she can now be trusted. The three reference letters, however, seem to be letters of recommendation, recommending that respondent be hired for some unidentified job. There is no indication in the letters that the authors knew about respondent's dishonest acts and subsequent criminal convictions. Consequently, they do not support respondent's claim of trustworthiness and rehabilitation. This observation finds further support in Dr. Jorge's July 25, 2007 psychological report. Dr. Jorge assessed respondent on July 20, 2007. As a result of his assessment, Dr. Jorge recommends, in pertinent part, the following:

"[Respondent's] clinical evaluation does not meet criteria for any chemical dependence diagnosis. She does however present a clinical picture of serious codependency and enabling behaviors. [Respondent] would highly benefit from therapy focusing on family of origin, parentification, shame-proneness, low self esteem issues as well as Cognitive Behavior therapy to identify and alter dysfunctional ideations about her self worth and efficacy. She would also benefit from codependent anonymous or a 12 step group in which she will have to be accountable for her codependent behaviors on an ongoing basis.

Recovery from codependency is possible with treatment. Only after undergoing treatment and with the endorsement of the therapist would [it] be recommended that she be trusted to be in a pharmaceuticals environment (emphasis added.) (Exhibit D.)"

15. Respondent has not presented proof that she has undergone "treatment" and that she has the "endorsement of the therapist" which, according to Dr. Jorge, would be necessary before she could be trusted in a pharmaceuticals environment. In other words, there is no proof of rehabilitation.

16. The reasonable costs of the investigation and enforcement of the instant case against respondent total \$5,646.75.

LEGAL CONCLUSIONS

1. Cause exists for discipline of respondent's registration pursuant to California Business and Professions Code sections 4300 and 4301, subdivision (f) because respondent's conduct, as set forth in Findings 6, 7, 12, and 13, constituted unprofessional conduct defined by subdivision (f) as "the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption."

2. Cause exists for discipline of respondent's registration pursuant to California Business and Professions Code sections 4300 and 4301, subdivision (j) because respondent's conduct, as set forth in Findings 6, 7, 9, 12, and 13, constituted unprofessional conduct defined by subdivision (j) as "the violation of any of the statutes of this state⁴ or of the United States regulating controlled substances and dangerous drugs."

3. Cause exists for discipline of respondent's registration pursuant to California Business and Professions Code sections 4300 and 4301, subdivision (o) because respondent's conduct, as set forth in Findings 6, 7, 9, 12, and 13, constituted unprofessional conduct defined by subdivision (o) as "violating or attempting to violate, directly or indirectly . . . any provision . . . of the applicable federal and state laws and regulations governing pharmacy"

4. Cause exists for discipline of respondent's registration pursuant to California Business and Professions Code sections 4300 and 4301, subdivision (p) because respondent's conduct, as set forth in Findings 6, 7, 9, 12, and 13, constituted unprofessional conduct defined by subdivision (p) as "actions or conduct that would have warranted denial of a license."

5. Cause exists for discipline of respondent's registration pursuant to California Business and Professions Code section 490 because respondent's convictions, as set forth in Finding 9, were for crimes which are directly and substantially related to the qualifications, functions and duties of a pharmacy licentiate/registrant.

6. The reasonable costs of the investigation and enforcement of the instant case against respondent, recoverable by the board pursuant to Business and Professions Code section 125.3, total \$5,646.75.

⁴ In addition to violating California Health and Safety Code section 11351, and California Penal Code section 487, subdivision (a) (See Finding 8), respondent's conduct also violated California Health and Safety Code section 11173, subdivision (a) which provides: "no person shall obtain or attempt to obtain controlled substances . . . by fraud, deceit, misrepresentation, or subterfuge"

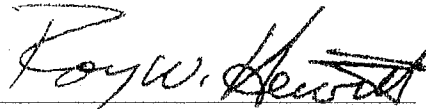
7 As set forth in Findings 14 and 15, respondent presented insufficient proof of rehabilitation to support her contention that she can now be trusted around drugs and therefore, should remain licensed/registered as a Pharmacy Technician.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Pharmacy Technician Registration number TCH 30657 issued to respondent, Yolanda S. Castro, is revoked.
2. Respondent shall pay the board \$5,646.75 as cost recovery pursuant to Business and Professions Code section 125.3.

DATED: August 28, 2007



ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

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5 Attorneys for Complainant

6
7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2958

12 YOLANDA S. CASTRO
13 1692 W. Victoria St.
San Bernardino, CA 92411

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 30657

Respondent.

15
16 Complainant alleges:

17 PARTIES

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

21 2. On or about September 10, 1999, the Board of Pharmacy issued Pharmacy
22 Technician Registration No. TCH 30657 to Yolanda S. Castro (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on October 31, 2006, unless renewed.

25
26 JURISDICTION

27 3. This Accusation is brought before the Board of Pharmacy (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 4300 of the Code provides, in pertinent part, that every license
3 issued by the Board is subject to discipline, including suspension or revocation.

4 5. Section 118, subdivision (b) states:

5 "The suspension, expiration, or forfeiture by operation of law of a license issued
6 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board of
7 by order of a court of law, or its surrender without the written consent of the board, shall not,
8 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
9 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
10 ground provided by law or to enter an order suspending or revoking the license or otherwise
11 taking disciplinary action against the licensee on any such ground."

12 6. Section 4301 of the Code states:

13 "The board shall take action against any holder of a license who is guilty of
14 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
15 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
16 following:

17

18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
19 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
20 otherwise, and whether the act is a felony or misdemeanor or not.

21

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

25

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

established by the board.

"(p) Actions or conduct that would have warranted denial of a license."

7. Section 11173, subdivision (a) of the Health and Safety Code provides:
"no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

8. CONTROLLED SUBSTANCES

a. "Lorcet," a brand name for a combination drug containing hydrocodone and acetaminophen, is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e)(4) and is categorized as a dangerous drug pursuant section 4022 of the Code.

b. "Lortab," a brand name for hydrocodone and acetaminophen, is a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

c. "Vicodin ES", a brand name for hydrocodone and acetaminophen, is a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and classified as a dangerous drugs pursuant to section 4022 of the Code.

9. 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.

FIRST CAUSE FOR DISCIPLINE

(Obtained Controlled Substances by Fraud or Deceit)

10. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (f), (j), and (o), and (p) of the Code on the grounds of unprofessional conduct for violating Health and Safety Code section 11173, subdivision (a) in that Respondent obtained controlled substances by fraud, deceit, or misrepresentation. The circumstances are as follows:

a. From on or about January 15, 2005 to on or about April 16, 2005, while employed as a pharmacist technician at Kaiser Hospital Pharmacy Riverside (Pharmacy) at

1 Riverside, California, Respondent removed approximately 7,000 tablets of Lortab,
2 10mg./500mg., (hydrocodone/acetaminophen); 13,000 tablets of Lorcet, 10mg./650mg.
3 (hydrocodone/acetaminophen); and 20,000 tablets of Vicodin ES (hydrocodone 7.5mg./750mg.)
4 From the hospital's pharmacy without a valid prescription of legal authorization.

5 b. On or about January 15, 2005, at 1821 hours, a covert camera installed in
6 the Pharmacy recorded Respondent removing three (3) manufacturer's containers of Lortab and
7 one (1) manufacturer's container of Vicodin from the pharmacy shelves. There was no evidence
8 or document showing that the removal of the medication by Respondent was used for dispensing
9 or that it was returned to the pharmacy stock.

10 c. On or about January 15, 2005, at 2109 hours, the camera recorded
11 Respondent removing three (3) manufacturer's containers of Vicodin from the pharmacy shelves.
12 There was no evidence or document showing that the removal of the medication by Respondent
13 was used for dispensing or that it returned to the pharmacy stock.

14 d. On or about February 27, 2005, at approximately 1900 hours, the camera
15 recorded Respondent removing three (3) manufacturer's containers of Lortab and one (1)
16 manufacturer's container of Vicodin from the pharmacy shelves. There was no evidence or
17 document showing that the removal of the medication by Respondent was used for dispensing or
18 that it was returned to the pharmacy stock..

19 e. On or about March 20, 2005, at approximately 1952 hours, the camera
20 recorded Respondent removing one (1) manufacturer's container of Vicodin from the pharmacy
21 shelves. There was no evidence or document showing that the removal of the medication by
22 Respondent was used for dispensing or that it was returned to the pharmacy stock.

23 f. On or about April 16, 2005, at approximately 1840 hours, the camera
24 recorded Respondent removing three (3) manufacturer's containers of Vicodin from the
25 pharmacy shelves and placing them in a box. There was no evidence or document showing that
26 the removal of the medication by Respondent was used for dispensing or that it was returned to
27 the pharmacy stock.

28 ///

1 g. On or about May 3, 2005, Respondent admitted to the Pharmacy Internal
2 Auditor that she had taken the medication.

3
4 PRAYER

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

7 1. Revoking or suspending Pharmacy Technician Registration No. TCH
8 30657, issued to Yolanda S. Castro;

9 2. Ordering Yolanda S. Castro to pay the Board of Pharmacy the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.
13

14 DATED: 6/29/06

15
16 P. J. Harris
17 PATRICIA F. HARRIS
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant
23
24
25
26