BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA,

In the Matter of the Accusation Against:

LAUREN BOOTH
1309 Renison Lane
Lincoln, CA 95648
Respondent.

File No. 2996

OAH No. N2006120297

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 May 2, 2007.

IT IS SO ORDERED April 2, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

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

In the Matter of the Accusation Against:	
LAUREN LEE BOOTH 1309 Renison Lane Lincoln, California 95648 Original Pharmacy Technician Registration Number TCH 23883 Respondent.	Case No. 2996 OAH No. N2006120297

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on February 20, 2007.

Patrick M. Kenady, Deputy Attorney General, represented the Board of Pharmacy.

Lauren Lee Booth appeared in pro per.

The record remained open for a period of seven days for the Deputy Attorney General to submit an original of the Executive Officer's Declaration of Costs. The original was received on February 23, 2007, and was substituted for the photocopy of the document originally offered in evidence. The record was closed and the matter was submitted on February 23, 2007.

FACTUAL FINDINGS

1. Virginia Herold is the Executive Officer of the Board of Pharmacy (Board). Ms. Herold filed the Accusation in her official capacity on November 13, 2006. The Accusation was timely served on Lauren Lee Booth at her address of record. The Board has jurisdiction to revoke, suspend or otherwise discipline any holder of an Original Pharmacy Technician Registration in the State of California.[1]

[1] Business and Professions Code section 4300.

2. Ms. Booth timely filed a Notice of Defense to the Accusation. In doing so, she updated her address of record, as reflected in the caption. The matter was set for an evidentiary hearing.

3. The Board issued Ms. Booth Original Pharmacy Technician's Registration number TCH 23883 on October 17, 1997. The registration has been continuously renewed and is due to expire on December 31, 2006. There is no record of any previous disciplinary action against Ms. Booth.

4. Ms. Booth was employed as a Pharmacy Technician for Long's Drug Stores "off and on" between 1996 and 2005. She worked in Long's pharmacies at locations in Roseville and Rocklin, California. In 2003, she started work at Long's Sunrise Avenue location in Roseville. According to her evidentiary hearing testimony, she began diverting controlled substance pain medications "one or two at a time," and taking the medication to self-treat her headaches, back and abdominal pain. She did not seek medical attention or try to obtain a pain medication prescription from a physician. She quickly "got addicted" and began diverting larger and larger quantities of hydrocodone APAP (Vicodin), a Schedule III controlled substance; Darvocet, a Schedule II controlled substance; and benzodiazepines, Schedule IV controlled substances, including Valium, Xanax, Clonazepam, Alprazolam, and Tylenol with codeine#3 APAP, among others. A video surveillance camera recorded some of Ms. Booth's diversion of controlled medications. One of the thefts that was recorded on video occurred on one of Ms. Booth's regular days off work, when she came in to the pharmacy for the sole purpose of taking more drugs. Long's Loss Prevention personnel and Roseville Police Department officers located a plastic baggie containing a significant quantity of drugs taken from Long's pharmacy supplies in Ms. Booth's car after she was confronted and admitted the thefts of drugs.

5. Ms. Booth readily admitted to Long's Loss Prevention officers and officers of the Roseville Police Department that she stole the missing drugs from the pharmacy and used them to medicated herself. She signed a statement made to Long's Loss Prevention admitting that she stole approximately 300-350 tablets of pain and sedation medications per month over an eight to nine month period. She stated she took pills directly from large storage bottles and out of the store. She denied ever taking a full bottle of medication, or taking any medications that were from patient prescriptions. There was no evidence that Ms. Booth altered any prescriptions or added any refills to existing prescriptions in order to divert the drugs. She blamed her thefts of the drugs on the addiction she developed. She testified that she "could not stop." Long's terminated her employment.

6. Ms. Booth agreed she stole approximately $2779.40 worth of drugs during the eight to nine months period ending with her arrest and termination. She stopped only when she was caught.

7. Ms. Booth was convicted on February 28, 2006 in the Placer County Superior Court, State of California, of a misdemeanor violation of Penal Code sections 487, subdivision (1), 503, grand theft by embezzlement. She entered into a plea agreement that

her initial plea to a felony violation would be reduced to a misdemeanor at sentencing, if she made full restitution to Long's by the date of sentencing. Ms. Booth made the restitution, and her conviction was made a misdemeanor by the sentencing judge, pursuant to Penal Code section 17, subdivision (b). Ms. Long was placed on three years of formal probation. The terms of probation included that Ms. Long serve 120 days in jail. She served the time on home detention. After completing her detention, she was ordered to enter and complete a theft education program. She was also ordered to pay a fine, subject herself to bodily fluids testing and to not possess any narcotic or controlled substance without a valid prescription. She was not ordered to complete a drug rehabilitation or treatment program.

8. Ms. Booth's conviction is substantially related to the qualifications, functions and duties of a registered Pharmacy Technician and involved moral turpitude. Ms. Booth's status as a registered Pharmacy Technician gave her access to controlled substances, which she misappropriated. Ms. Booth abused the trust and access to controlled drugs that her Board registration and employment with Long's afforded.

9. Ms. Booth expressed great remorse for her conduct in her written statement to her employer. She agreed to repay Long's for the entire value of the drugs she took, but she mentioned she had no money. In her testimony, Ms. Long noted she did make full restitution to Long's for the value of the drugs she took. The court documents in evidence confirmed her testimony.

10. Ms. Booth claimed in her testimony that she stopped using drugs when she was caught stealing them from Long's. She testified that she does not now use controlled substances, even with a prescription. She expressed what appeared to be genuine remorse for her actions and sadness for betraying the trust extended to her by "good people" at Long's. She described a great struggle to deal with the embarrassment and humiliation her conduct has caused. She has no prior record of any criminal violation or of any previous problem with drugs or alcohol. She readily and quickly admitted her unlawful conduct when caught. She has found employment with Blue Shield of California as a prior authorization technician. She testified that her position requires licensure.

11. Ms. Booth produced no extrinsic evidence to support her claim of abstinence and separation from her addiction to controlled substance pain killers. She acknowledged she has never entered or completed a drug rehabilitation or treatment program, even though she candidly admitted that she quickly became addicted to controlled substance pain killers and blamed her addiction for her continuing theft and self-medication. There was no evidence she has ever sought medical attention for her pain problems that she identified as the reason she first started taking and using the drugs. There was no evidence that she has seen or been treated by a specialist in addiction medicine. There was no evidence she has sought counseling or therapy for her addiction. Under the circumstances, Ms. Booth presented little persuasive evidence of rehabilitation.

12. The Deputy Attorney General introduced two certifications of costs of investigation and enforcement in evidence, pursuant to Business and Professions Code

section 125.3. The Deputy Attorney General's certification shows 5.25 hours of work on the case, for a total cost billed to the Board for Deputy Attorney General services of $784.50. The certification of the Executive Officer claims 15.5 hours of "Inspector's costs," for a total of $1007.50. The Inspector's costs are billed at a rate of $65.00 per hour. There is no indication of any sort in the Executive Officer's certification regarding what the Inspector(s) did during those 15.5 claimed hours. The case was very simple and the bulk of the investigation was performed by Long's Loss Prevention and officers of the Roseville Police Department. Without additional detail, it is difficult to imagine how two full days work was required to prepare and submit a case so lacking in complexity, where essentially all the investigation and preparation had already been performed by outside agencies.

LEGAL CONCLUSIONS

1. The burden of proof for all of the allegations made in this matter rests upon the Division and requires the Division to prove the allegations by "clear and convincing" evidence.[2] Clear and convincing evidence requires a finding of high probability. Clear and convincing evidence means the proof in support of the allegations must be clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind.[3] This standard of proof was applied to each and every allegation in the Accusation in making the conclusions below.

2. Business and Professions Code section 4300 provides:

(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.

[¶]...[¶]

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[2] *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.
[3] *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.

3. Business and Professions Code section 4301 provides:

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.

[¶]...[¶]

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

[¶]...[¶]

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

[¶]...[¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving

controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

[¶]...[¶]

4. Business and Professions Code section 4060 provides:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, 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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, 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, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

5. Ms. Booth violated Business and Professions Code section 4301, subdivision (f). Ms. Booth stole controlled substances from Long's Drug stores while employed as a registered Pharmacy Technician in that organization's pharmacy. Her acts were dishonest and involved moral turpitude. Legal cause exists to revoke or suspend her license pursuant to Business and Professions Code section 4300.

6. Ms. Booth violated section 4301, subdivision (j) in that she unlawfully possessed controlled substances without a valid prescription, in violation of section 4060. Separate legal cause exists to revoke or suspend Ms. Booth's license, pursuant to section 4300.

7. Ms. Booth violated section 4301, subdivision (j), in that she has suffered the conviction of a misdemeanor offense substantially related to the qualifications, functions and duties of a registered Pharmacy Technician, as set forth in Factual Findings 4-8, inclusive. Separate legal cause exists to revoke or suspend Ms. Booth's license pursuant to section 4300.

8. Where violations of law are proved, assessing the appropriate sanction to be imposed is a matter of weighing the factors in aggravation against those in justification, mitigation and rehabilitation. Ms. Booth's conduct is very serious and strikes at the heart of the trust extended to registered Pharmacy Technicians by virtue of Board registration. The conduct continued over a significant period of time, is recent, and did not end until she was caught. She remains on criminal probation. Factors in aggravation are thus significant.

The fact that Ms. Booth became addicted to controlled substance pain killers does not mitigate or justify the violations. The mere passage of time without any further violation of law is not mitigating, especially while Ms. Booth remains on criminal probation. Ms. Booth did express what appeared to be genuine remorse for her conduct, but has done little about it. She did repay the value of the drugs she stole, but only upon the incentive of having her felony plea reduced to a misdemeanor. Ms. Booth's financial restitution to Long's under these circumstances can hardly be considered mitigating or evidence of rehabilitation. She did admit her conduct readily when confronted, saving Long's and law enforcement time and money in investigation of the thefts.

On balance, there is little meaningful evidence of rehabilitation present, as set forth in Factual Findings 8-11. Ms. Booth has taken no extrinsic steps to deal with her addiction. Her claim to freedom from an addiction that she admittedly could not control for a significant period of time rests solely on her own assertion and is entirely unverified. On this record, continuing Ms. Booth's registration would be tantamount to endorsing continued licensure for a person whose addiction to controlled substance pain killers appears to remain uncontrolled.

9. Business and Professions Code section 125.3, provides, in pertinent part:

> (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board or the board created by the Chiropractic Initiative Act, 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.

[¶]...[¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

[¶]…[¶][4]

10. Costs of investigation and prosecution of the action are recoverable if the Board prevails in the action.[5] The Board has prevailed in the action. *Zuckerman v. Board of Chiropractic Examiners*[6] requires the consideration of the following factors in determining the amount of costs to be assessed:

- The board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed.

- The board must consider the licensee's subjective good faith belief in the merits of his or her position.

- The board must consider whether the licensee has raised a colorable challenge to the proposed discipline.

- Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation, the board must determine that the licensee will be financially able to make later payments.

- Finally, the board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct.

11. The costs declarations filed in this matter were carefully considered against the standards set forth above. The costs claimed for the Deputy Attorney General's services are reasonable and recoverable. The costs claimed for the Inspector's services lack sufficient detail to overcome an initial impression that the time spent appears excessive in light of the uncomplicated nature of the case and the fact that most of the investigation was performed by outside agencies. Under these circumstances, eight hours of Inspector's costs is a more reasonable amount. Costs may be recovered for the Inspector in the amount of in the amount of $520.00. Total recoverable costs as part of the disciplinary Order are therefore $1304.50.

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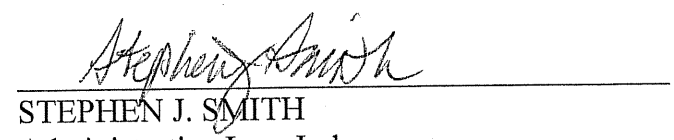
[4] Business and Professions Code Section 125.3.
[5] Business and Professions Code section 125.3.
[6] *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.

ORDER

Original Pharmacy Technician license number TCH 23883, issued by the Board of Pharmacy to Lauren Lee Booth, is REVOKED, separately and severally for each of Legal Conclusions 5-7, inclusive. The Board shall recover costs in the amount of $1304.50.

DATED: February 28, 2007



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: LAUREN BOOTH 701 Gibson Drive #624 Roseville, Ca. 95678 Original Pharmacy Technician Registration Number No. TCH23883 Respondent.	Case No. 2996 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about October 17, 1997, the Board of Pharmacy issued Original Pharmacy Technician Registration Number TCH23883 to Lauren Booth (Respondent). The Original Pharmacy Technician Registration Number was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 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 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.

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, optometrist ..."

6. 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:
>
> . . .
>
> (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 any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.
>
> . . .
>
> (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or dangerous drugs, shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled

substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

. . .

FIRST CAUSE FOR DISCIPLINE

(MORAL TURPITUDE, DISHONESTY, FRAUD OR DECEIT)

7. Respondent is subject to disciplinary action under section 4301, subdivision, (f) in that respondent between July 2004 and March 2005 did willfully and unlawfully take from Longs Drug controlled substances while employed by Longs, to wit; Clonazepam, Alprazolam, Diazepam, Lorazepam and Hydrocone/APAP, an act constituting moral turpitude, dishonesty, fraud or deceit.

SECOND CAUSE FOR DISCIPLINE

(CONTROLLED SUBSTANCE VIOLATION)

8. Respondent is subject to disciplinary action under section 4301(j) in that Respondent between August 2004 and March 2005 possessed without a prescription controlled substances in violation of section 4060, to wit, Clonazepam, Alprazolam, Diazapam, Lorazepam and Hydrocone/APAP.

THIRD CAUSE FOR DISCIPLINE

(CRIMINAL CONVICTION)

9. Respondent is subject to disciplinary action under section 4301, subdivision, (l) in that Respondent was convicted on October 27, 2005 in the case People v. Lauren Booth on the plea of guilty of the following crime substantially related to the qualifications, functions or duties as a registrant: Penal Code section 487(1)/505 FRAUD THEFT: EMBEZZLEMENT, subsequently reduced pursuant to Penal Code section 17 to a misdemeanor. Respondent between August 2004 and March 2005 and while employed by Longs Drugs did wilfully and unlawfully take from said

Longs Drugs medications exceeding Four Hundred Dollars ($400), to wit, Clonazepam, Alprazolam, Diazepam, Lorazepam and Vicodin.

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 TCH23883, issued to Lauren Booth;

B. Ordering Lauren Booth 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: 11/13/06

VIRGINIA HEROLD
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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