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

In the Matter of the Accusation Against: RASHANDRA D. JOHNSON 1523 Sherman Pl #B Long Beach, California 90804 Pharmacy Technician Registration No. TCH 28563 Respondent.	Case No. 3060 OAH No. L2007110831

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 October 23, 2008.

It is so ORDERED on September 23, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
KENNETH H. SCHELL
Board President

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

In the Matter of the Accusation Against: RASHANDRA D. JOHNSON, Pharmacy Technician Registration No. TCH-28563, Respondent.	Case No. 3060 OAH No. L-2007110831

PROPOSED DECISION

Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter in Los Angeles on July 8, 2008.

Complainant was represented by Kimberlee D. King, Deputy Attorney General. Respondent Rashandra D. Johnson was present and represented herself.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on April 27, 2007, the Accusation, Case No. 3060, was made and filed by complainant Virginia Herold in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (hereinafter Board).

2. On March 3, 1999, the Board issued original pharmacy technician registration no. TCH-28563 to Rashandra D. Johnson (hereinafter respondent) to act as a pharmacy technician in this state. Said registration expired on April 30, 2008. Jurisdiction continues to exist in this matter pursuant to Business and Professions Code section 118, subdivision (b). Respondent has no disciplinary history on her pharmacy technician registration.

3. (A) On or about March 1, 2006, before the Superior Court of California, County of Los Angeles, in Case No. NA066761, respondent was convicted on her pleas of

guilty of three counts of the unlawful use of personal identification information of another person, or identity theft, in violation of Penal Code section 530.5, subdivision (a), felonies and crimes involving moral turpitude.

(B) Based on her plea, the Superior Court suspended the imposition of sentence and placed respondent on formal probation for three years on condition, in part, that she pay a restitution fine of $200, pay a parole restitution fine of $200, possess no blank checks, not write any checks, not have a bank checking account, seek and maintain training or schooling, keep her probation officer apprised of her residence and telephone numbers, not own or use any dangerous weapons, submit her person and property to search or seizure by any law enforcement or probation officer with or without a warrant, obey all laws and orders of the court, and obey all rules and regulations of the probation department.

4. (A) The facts and circumstances of respondent's offenses were that, in or about December 2004, victim T.W. was denied issuance of a credit card due to two negative accounts on her credit record.[1] TW obtained a credit report which showed two delinquent accounts for telephone service and cable television service. TW had not applied for or opened these accounts. TW then filed an identity theft report with the Alhambra Police Department which then transferred the case to the Long Beach Police Department. In or about July 2005, TW was also denied financing to purchase a home due to the two negative accounts on her credit record. A detective from the Long Beach Police Department's identity theft unit contacted the telephone company and cable television company and found that the billing address for the two delinquent accounts was located in Long Beach. Respondent lived at the address with her fiancé and their son.

(B) On August 2, 2005, two Long Beach Police Department detectives executed a search warrant at respondent's home. Respondent was at home with her five-year-old son. When first asked whether she had used TW's name to open the two delinquent accounts, respondent denied any involvement. Thereafter, the detectives found a cable television bill in the victim's name in respondent's closet. Respondent stated that a third party had opened the accounts. The detectives then found a piece of paper with the victim's name, address, telephone number, date of birth, California driver's license number, and Social Security number. Respondent then admitted that she had used TW's name and Social Security number to obtain accounts at the telephone and cable television companies and had not paid the accounts. She indicated to the detectives that she thought that the victim was a fictitious person. However, the detectives found a photograph of the victim with the victim's name in respondent's home. Inside a closet, the detectives also found various insurance documents related to a December 1993 automobile accident involving the victim. Respondent signed a statement about the offenses and denied opening any other accounts under other persons' identities. Later at the police station, one of the detectives reviewed the documents recovered from respondent's home and found another cable television bill under the name of a second victim M.M. Upon being confronted about this third account,

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[1] The victims discussed herein are identified by the first initials of their first and last names to protect their privacy.

respondent stated that she found papers in a dresser bought by her mother and had used the personal information in the papers to commit identity theft. Respondent was charged with and pleaded guilty to three counts of felony identity theft in connection with the two delinquent accounts that she obtained under TW's name and the third account under MM's name.

(C) In mitigation of her offenses, respondent was cooperative with the police detectives who searched her home. She expressed remorse and asked the detectives to tell victim TW that she was sorry and did not mean to affect the victim's credit rating.

5. Respondent's conviction for identity theft was for crimes substantially related to the qualifications, functions, or duties of a registered pharmacy technician within the meaning of California Code of Regulations, title 16, section 1770. A pharmacy technician is required to fill prescriptions for medications for patients under the supervision of a pharmacist and has access to patients' confidential personal and medical information on medication vials and in pharmacy files and computers. As such, a registered pharmacy technician is expected to have qualities of honesty and integrity. Respondent's crimes and acts involved dishonesty, fraud, or deceit.

6. Respondent admits her conviction and was candid about the circumstances of her crimes. She committed identity theft because she had bad credit and could not obtain telephone and cable television service under her own name and credit. In May 2003, respondent was laid off from her job as a pharmacy technician at Universal Care, an insurance and health care company in Signal Hill. She began caring for her ill mother who received in-home support services from the county. Respondent only had a part-time, intermittent job as a longshoreman and was a single parent to two children. After obtaining the telephone and cable television accounts in other persons' names, respondent paid the bills for an undetermined length of time but then failed to make payments on the accounts which became delinquent.

7. Respondent expresses and demonstrates remorse for her crimes. She states that she did not understand the seriousness of her acts of identity theft. She indicates that she did not intend to hurt anyone or affect anyone's credit standing. She states that she learned her lesson and would not commit identity theft again.

8. Respondent last worked as a pharmacy technician in May 2003. Later that same year, she had a job opportunity at a Rite-Aid pharmacy but chose to care for her mother. Respondent desires to keep her pharmacy technician registration because she studied diligently at Long Beach City College to fulfill prerequisites for the registration while pregnant and caring for her young son. She then attended a school for pharmacy technicians. Respondent hopes to retain her registration and to work again as a pharmacy technician.

9. Since her conviction in March 2006, respondent has successfully complied with the conditions of her probation. Her probation officer opines that, after she completes

probation, respondent appears to be an acceptable candidate for early termination of probation and may be eligible for reduction of her offenses from felonies to misdemeanors. Respondent's probation will not expire until February 28, 2009.

10. Respondent is 34 years old. She married her fiancé in November 2006. Together, she and her husband have four children. Her husband owns a carpet cleaning business. Respondent works part-time and intermittently as a longshoreman. She is a minister in her church in Long Beach and involved in church activities, which includes feeding the homeless.

11. The reasonable costs incurred by the Board for the investigation or enforcement of this matter total $3,404, as set forth in the Certification of Costs (Exh. 5).

* * * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's pharmacy technician registration pursuant to Business and Professions Code sections 4301, subdivision (l), and 490, in that respondent has been convicted of crimes substantially related to the duties, qualification, or functions of a pharmacy technician, as set forth in Findings 3 – 5 above. Respondent's crimes evidence to a substantial degree a present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare within the meaning of California Code of Regulations, title 16, section 1770, based on Finding 5 above.

2. Grounds exist to revoke or suspend respondent's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (f), in that respondent committed acts involving dishonesty, fraud, or deceit, as set forth in Findings 3 - 5 above.

3. Grounds exist to direct respondent to pay the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3 in that respondent committed violations of the Pharmacy Law, based on Conclusions of Law 1 and 2 above. The reasonable costs of investigation and enforcement come to a total sum of $3,404, as set forth in Finding 11 above. However, respondent will not be directed to pay the reasonable costs of investigation and enforcement at this time due to her limited financial means, as described in Findings 6, 8, and 10 above. Respondent works part-time and intermittently as a longshoreman. She still owes approximately $550 to the Superior Court as a condition of her formal probation. She and her husband have four children and he owns

a carpet cleaning business. Respondent committed her identity theft crimes because she did not have credit or money.

4. Discussion—Complainant proved by clear and convincing evidence to a reasonable certainty that respondent was convicted of three felony counts of identity theft, which are substantially related to the qualifications, functions, or duties of a registered pharmacy technician. In the course of committing her offenses, respondent committed acts involving dishonesty, fraud, or deceit. Respondent, on the other hand, did not establish that she is rehabilitated from her conviction, based on Findings 3 and 6 – 11 above. It has been only a little more than two years since her conviction. She remains on formal probation for her offenses and has not paid approximately $550 in fees or costs ordered by the sentencing court. To her credit, respondent is remorseful about her crimes and the loss of credit standing suffered by the victims of her crimes. However, other than her own testimony, respondent did not present any other evidence, such as letters of reference, attesting to her honesty or trustworthiness or change in her attitude or outlook following her conviction.

It is understood that respondent strived very hard to become a pharmacy technician and wants very much to keep her registration. Due, however, to the seriousness of her offenses and the access that a pharmacy technician can have to patients' private and confidential information at a pharmacy, public safety and welfare require that respondent's registration be revoked. Respondent is encouraged to apply for reinstatement of her registration after she completes her criminal probation, obtains reduction or expungement of her offenses, and has rehabilitated herself.

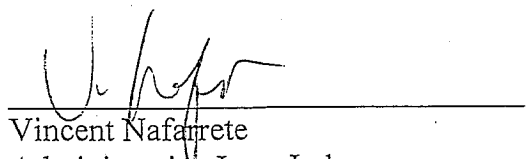
* * * * * * *

WHEREFORE, the following Order is hereby made:

ORDER

Pharmacy technician registration no. TCH-28563 and registration rights previously issued by the Board of Pharmacy to respondent Rashandra D. Johnson are revoked, based on Conclusions of Law 1 – 2 and 4 above, jointly. Respondent will not be ordered to pay the Board of Pharmacy for the reasonable costs of investigation and enforcement of this matter, but the Board of Pharmacy may require payment of said costs as a condition of reinstatement of her registration, if deemed appropriate by the Board of Pharmacy.

Dated: July 30, 2008



Vincent Nafarrete
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: RASHANDRA D. JOHNSON 1523 Sherman Pl. # B Long Beach, CA 90804 Pharmacy Technician Registration No. TCH 28563 Respondent.	Case No. 3060 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia Herold (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 March 3, 1999, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 28563 to Rashandra D. Johnson (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

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.

STATUTORY PROVISIONS

4. Section 4300 of the Code permits the Board to take disciplinary action suspend or revoke a license issued by the Board.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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.

"(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.

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

. . .

7. 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."

8. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal 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

(Conviction of Substantially Related Crimes)

10. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision (1) and 490 of the Code as defined in the California Code of Regulations, title 16, section 1770 in that Respondent was convicted of crimes substantially related to the duties, qualification, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about November 10, 2005, in the County of Los Angeles, Respondent was convicted on a plea of guilty to three (3) counts of violating Penal Code section 530.5(a), (unauthorized use of personal identity of another), a felony, in the Superior Court of the State of California, County of Los Angeles, Case No. NA066761, entitled *The People of the State of California v. Rashandra Denise Johnson.*

b. The circumstances surrounding the conviction are that on or about August 2, 2005, in the County of Los Angeles, Respondent was the subject of a police investigation, on suspicion of identity theft, which included a search and seizure of evidence from her residence. The search of Respondent's residence revealed that Respondent was in possession of personal identifying information of persons other than herself such as the driver's license and social security numbers of these persons which she used without their permission to acquire credit accounts in their name.

SECOND CAUSE FOR DISCIPLINE

(Commission of Act Involving Dishonesty)

10. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision (f) in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as follows:

a. On or about August 2, 2005, in the County of Los Angeles, Respondent was the subject of a Long Beach Police Department investigation, on suspicion of identity theft, which included a search and seizure of evidence from her residence. The search of Respondent's residence revealed that Respondent was in possession of personal identifying information of persons other than herself such as the driver's license and social security numbers of these

persons as well as billing statements of credit accounts in the names of these persons with Respondent's address. By her own admission, respondent applied for these accounts using personal identifying information of persons other than herself without their permission to acquire and charge credit on credit accounts in their name.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 28563, issued to Rashandra D. Johnson;

2. Ordering Rashandra D. Johnson to pay the Board of Pharmacy, Department of Consumer Affairs 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: 4/27/07

Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

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