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

In the Matter of the Accusation Against: **KRISTEN ANN BAILEY** 5445 Baltimore Drive, #26 La Mesa, CA 91942 Original Pharmacy Technician Registration No. TCH 32272 Respondent	Case No. 3173 OAH No. 2008090472

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 February 26, 2009.

It is so ORDERED on January 27, 2009.

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: KRISTEN ANN BAILEY 5445 Baltimore Drive, #26 La Mesa, CA 91942 Pharmacy Technician Registration No. TCH 32272, Respondent.	Case No. 3173 OAH No. 2008090472

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on November 4, 2008.

Deputy Attorney General Erin M. Sunseri represented complainant.

Kristen A. Bailey (respondent) represented herself.

Oral and documentary evidence was received and the matter was submitted on November 4, 2008.

FACTUAL FINDINGS

1. The Accusation against respondent was filed by Virginia K. Herold (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. On February 8, 2000, the board issued Pharmacy Technician Registration number TCH 32272 to respondent. At all relevant times, respondent's registration was, and currently is, in full force and effect.

3. On September 29, 2006, respondent was convicted, in San Diego County Superior Court, East County Division, Case Number C264984, after entry of her guilty plea, of one count of violating California Penal Code section 487 (grand theft of personal property), a misdemeanor crime (pursuant to Pen. Code, § 17, subd. (b)) involving moral turpitude which is directly and substantially related to the qualifications, functions and duties of a licentiate/registrant.

4. As a result of respondent's September 29, 2006 conviction, respondent was placed on three years of summary probation. At the time of the instant hearing respondent still had approximately one year of probation remaining.

5. The facts and circumstances underlying respondent's conviction are as follows: On September 26, 2006, respondent was working as a Pharmacy Technician at a Sav-On Drugs store in Lemon Grove, California. During the time respondent was working, a wallet was found and was turned in to the pharmacy counter. Respondent and a co-worker looked inside the wallet and discovered that along with identification, the wallet contained $1,100 in cash. Respondent's co-worker suggested that she and respondent split the money. Respondent rejected that idea and called the telephone number of the wallet's owner. There was no answer and respondent did not leave a message. The temptation became too great for respondent to resist so she took the money from the wallet before turning the wallet in to the Sav-On customer service counter. Later, when the customer came back to Sav-On for her wallet respondent referred the customer to the customer services counter. Respondent was standing nearby when the customer opened her wallet, discovered her money was missing and said something to the effect of "oh, no! My money is missing." Respondent "panicked" and was unable to admit she had taken the money. Respondent took the money home with her. That same evening San Diego Sheriff's Deputies went to respondent's home to question her about the missing money. Respondent admitted taking the money and the Deputies recovered the stolen money from respondent's jewelry box.

6. Respondent testified during the hearing. She testified that she knew at the moment she took the money from the wallet on September 16, 2006 that she was doing something wrong. She does not know why she did such a "bad thing." Respondent testified that "I'm a good person, I just did a bad thing" and she immediately was, and still is, "very ashamed and sorry for what I did."

Recently, respondent's four and one-half year-old daughter stole a candy bar from a Vons store. When respondent discovered what her daughter had done she immediately took her daughter back to the Vons store, had her return the candy bar and apologize to store personnel for taking the candy.

Respondent knows that taking things that do not belong to you is wrong, and to this day respondent "still doesn't know why" she took the money from the wallet on September 26, 2006.

Respondent has no history of any other criminal conduct.

7. Other than her own testimony, respondent presented no evidence in mitigation or of rehabilitation.

8. The reasonable costs of the investigation and enforcement of the instant case against respondent total $4,503.

LEGAL CONCLUSIONS

1. Cause exists for discipline of respondent's registration pursuant to California Business and Professions Code sections 490 and 4301, subdivision (l) because respondent's conviction, as set forth in Finding 3, was for a crime which is directly and substantially related to the qualifications, functions and duties of a pharmacy licentiate/registrant.

2. 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 Finding 5, constituted unprofessional conduct defined by subdivision (f) as "the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption."

3. 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 and resulting conviction, as set forth in Findings 3 and 5, constituted unprofessional conduct defined by subdivision (p) as "actions or conduct that would have warranted denial of a license."

4. 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 $4,503.

5. Respondent is still on criminal probation and admitted that she has no insight as to what caused her to give in to temptation on September 26, 2008. In sum, respondent presented insufficient proof of rehabilitation to support a belief that she would not give in to similar temptation in the future.

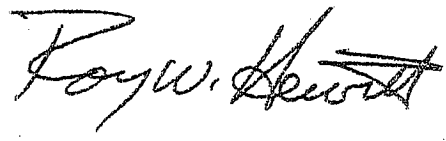
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Pharmacy Technician Registration number TCH 32272 issued to respondent, Kristen A. Bailey, is revoked.

2. Respondent shall pay the board $4,503 as cost recovery pursuant to Business and Professions Code section 125.3.

DATED: November 26, 2008



ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

In the Matter of the Accusation Against: KRISTEN ANN BAILEY 5445 Baltimore Drive #26 La Mesa, CA 91942 Pharmacy Technician Registration No. TCH 32272 Respondent.	Case No. 3173 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia K. Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy.

2. On or about February 8, 2000, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 32272 to Kristen Ann Bailey (Respondent). The Pharmacy Technician Registration will expire on February 28, 2010, unless renewed.

STATUTES

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

4. 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.

5. Section 4300 of the Code states:

(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.

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. . . . 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. . . .

. . . .

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

. . . .

7. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

. . . .

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

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 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

10. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

REGULATIONS

11. 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.

12. California Code of Regulations, title 16, section 1769, subdivision b, states:

When considering the suspension or revocation of a facility or personal license on the ground that the licensee or the registrant has been convicted of a crime, the board in evaluating the rehabilitation of such person and her present eligibility for a license will consider the following:

(1) The nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) Time that has elapsed since the commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

13. 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.

FACTS

14. On or about on or about September 26, 2006, in a criminal proceeding entitled *People v. Kristin Ann Bailey,* in California Superior Court, San Diego East County Division, Case Number C264984, Respondent was convicted by her plea of guilty to violation of Penal Code section 487 (grand theft of personal property), a misdemeanor pursuant to Penal Code section 17(b).

a. Respondent was sentenced to three (3) years summary probation, six (6) days in the custody of county jail, and fines in the amount of approximately $900.00.

b The circumstances of the crime are that on or about September 26, 2006, while Respondent was working as a Pharmacy Technician at Sav-On Drugs in Lemon Grove, a customer found someone else's wallet in the store and turned it into the pharmacy counter for safe-keeping. Respondent and a co-worker opened the wallet to find identification in order to contact the owner. They discovered that the wallet contained $1,100.00 in cash. Respondent later told her co-worker that she had contacted the wallet owner when, in fact, she had not. Respondent took all of the $1,100.00 cash out of the wallet and put it into her own back-pack. When the owner of the wallet arrived at the pharmacy counter to retrieve her wallet, Respondent told her that the wallet was at the customer service counter. Respondent then grabbed her back-pack, handed the wallet, without the $1,100.00 inside, to the store manager, and immediately exited the store. Respondent did not return to complete her scheduled work hours that day. That evening San Diego Sheriffs went to Respondent's home, questioned her, took her into custody, and retrieved the $1,100.00 cash from Respondent's jewelry box.

FIRST CAUSE FOR DISCIPLINE

(9/29/06 Conviction of Substantially Related Crime for Grand Theft on 9/26/06)

15. Respondent is subject to disciplinary action under Code sections 490, and 4301, subdivision (l), in that she was convicted of a crime substantially related to the duties, functions and qualifications of a pharmacy technician, as described in paragraph 14 above, which is incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Dishonest Act)

16. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), in that she committed acts involving moral turpitude, dishonesty, deceit, or corruption when she stole $1,100.00 from a wallet that did not belong to her, as described in paragraph 14 above, which is incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conduct Warranting Denial of Licensure)

17. Respondent is subject to disciplinary action under Code section 4301, subdivision (p), in that she committed acts which, if she had committed before she were issued her Pharmacy Technician Registration, would have warranted the denial of her application for licensure in that she stole $1,100.00 from a wallet that did not belong to her, as described in paragraph 14 above, which is incorporated herein by reference.

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 32272, issued to Kristen Ann Bailey.

B. Ordering Kristen Ann Bailey 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: 7/17/08

VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

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