



California State Board of Pharmacy

1625 N. Market Blvd, N219, Sacramento, CA 95834
Phone: (916) 574-7900
Fax: (916) 574-8618
www.pharmacy.ca.gov

STATE AND CONSUMER SERVICES AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

February 29, 2012

CERTIFIED MAIL

Eunice Jasmine Cano
7900 Quill Drive
Downey, CA 90242

RE: Administrative Case No. 3544

Dear Ms. Cano:

Attached is the Board of Pharmacy's Decision and Order regarding the above-referenced matter. Your attention is directed to page 6 of the decision.

Effective March 30, 2012, Pharmacy Technician License No. TCH 46972, issued to Eunice Jasmine Cano is revoked. You are ordered to pay costs in the sum of \$500.00 to the Board within sixty (60) days of the effective date of this decision.

Please return your license to the board on or before the effective date of this decision.

Government Code section 11521 permits the Board to reconsider its decision, on its own motion or on petition of any party. If you wish to file such a petition, it must be received in the Board offices no later than five (5) days prior to the effective date of the decision.

If you have any questions concerning this matter, you may contact Lisa Chullino, Enforcement Analyst, at (916) 574-7921.

Sincerely,

A handwritten signature in black ink, appearing to read "Virginia K. Herold".
VIRGINIA K. HEROLD
Executive Officer

YKH:lc
Enclosure

cc: Nancy Kaiser, DAG

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

In the Matter of the Accusation Against:

EUNICE JASMINE CANO

7900 Quill Drive
Downey, CA 90242

Pharmacy Technician License
No. TCH 46972

Respondent.

Case No. 3544

OAH NO.: 2011060949

DECISION AND ORDER

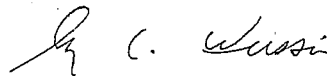
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 30, 2012.

It is so ORDERED on February 29, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against:

EUNICE JASMINE CANO
7900 Quill Drive
Downey, CA 90242

Pharmacy Technician License
No. TCH 46972,

Respondent.

Case No.: 3544

OAH No.: 2011060949

PROPOSED DECISION

This matter was heard by Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings on December 12, 2011, at Los Angeles, California.

Nancy A. Kaiser, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and represented herself.

Oral and documentary evidence was received and argument was heard.

The matter was held open to allow Complainant to file a post-hearing letter brief. Same was received on December 14, 2011 and incorporated into Exhibit 1. Respondent replied on December 29, 2011. The reply was marked Exhibit C and received in evidence. The matter was deemed submitted on December 30, 2011.

The Administrative Law Judge now finds, concludes and orders as follows:

//
//
//
//
//
//
//

FACTUAL FINDINGS

Parties

1. Virginia Herold, Complainant herein, brought the Statement of Issues in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On February 4, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 46972 to Eunice Jasmine Cano, Respondent herein. The Pharmacy Technician License is in full force and effect.

Procedure

3. Respondent has timely requested a hearing. Complainant has met all pre-hearing jurisdictional requirements. Administrative proceedings before the Department are conducted in conformity with the provisions of the California Administrative Procedure Act, chapter 8, commencing with Government Code section 11500 *et seq.*

4. The First Cause of Action of the Accusation was dismissed pursuant to Complainant's request (motion) set forth in the post-hearing letter brief.

Criminal Proceeding

5. On December 28, 2008, Deputies of the Los Angeles County Sheriff were conducting a foot patrol check at the Sugar Shack Bar parking lot in Huntington Park, a location known for gang, prostitution and a high level of narcotics activity. While on patrol at that area Deputies found Respondent, then 29 years of age, in possession of a clear plastic red ziplock baggie containing a crystalline substance. Respondent was arrested. The crystalline substance was later identified as methamphetamine¹ for which Respondent had no lawful prescription. Respondent's said possession of a dangerous drug was unlawful and, accordingly, the act of unlawful possession constitutes unprofessional conduct.

6. As a result of Respondent's conduct set forth in Finding 5 Respondent was subjected to criminal proceedings. Thereafter, Respondent was found eligible under Penal Code section 1000 for deferred entry of judgment. Therefore, on February 18, 2009, in the criminal proceeding entitled *The People of the State of California v. Eunice Jasmine Cano* Super. Ct. Los Angeles County, 2008, No. 8DY08580 (Court Case), Respondent was placed

¹ Methamphetamine is A Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d) (2), and categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

on deferred entry of judgment (DEJ) on her plea of guilty to one misdemeanor count of violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance, Methamphetamine]. The Court ordered Respondent to pay fines and to complete a Penal Code section 1000 drug program within 18 months.

7. On January 25, 2010, the Court Case was called for DEJ compliance. Respondent failed to appear without legal excuse. The Court therefore terminated DEJ, reinstated the criminal proceeding and issued a bench warrant in the amount of \$30,000.00. On January 28, 2010, the Court reinstated Respondent's deferred entry of judgment and recalled the warrant. On April 28, 2010, Respondent paid fees owing to the Court and the Court set aside the judgment and dismissed the action. Subsequently, the executive officer of the Court submitted an adult subsequent action disposition information form to the Department of Justice as notification that the Court Case has been sealed per Penal Code section 1001.9.

8. The conduct set forth in Finding 5 is substantially related² to the qualifications, functions or duties of the license in that said conduct, to a substantial degree, evidences present or potential unfitness of a person holding a license as a pharmacy technician to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

Rehabilitation

9. Prior to her possession of Methamphetamine on December 28, 2008, Respondent had no criminal history and otherwise met the eligibility requirements of Penal Code 1000 for a DEJ. Subsequent to her last Court appearance Respondent has suffered no conviction and since that time she has been in conformity to society's norms and rules of civil behavior. However, it has been less than two years – April 28, 2010 – since the Court set aside the judgment of conviction and dismissed the action. Given Respondent's substantially related conduct (Findings 5 and 8) a record of clear and convincing rehabilitation is necessary for continued licensure. The time since April 28, 2010 is not sufficient to establish such rehabilitation as is demonstrated in the Findings which follow.

10. There is no evidence of completion of formal education or vocational training courses for economic self- improvement, particularly courses addressing (other than the DEJ program) the effects upon individuals and society of the possession and use of dangerous drugs.

11. There is no evidence of volunteer work, that is, significant or conscientious involvement in community, church or privately-sponsored programs, including drug and substance abuse clinics, designed to provide social benefits or to ameliorate social problems.

² California Code of Regulations, title 16, section 1770.

12. There is no evidence of sustained employment since the time of the wrongful conduct or of new and different social relationships from those which existed at the time of the possession of the Methamphetamine.

13. Respondent did not establish a change in attitude from that which existed at the time of the wrongful conduct as demonstrated by evidence from persons competent to testify as to Respondent's social adjustments. Her testimony did not display an understanding or awareness of the gravity of the wrongful conduct.

14. There were no character witnesses and no evidence, oral or documentary from a prospective employer with knowledge of the wrongful conduct and the facts and circumstances thereof.

Costs

15. Complainant established reasonable costs of investigation and prosecution of this matter to be the sum of \$4,975.00.

16. Respondent is not now employed. She last worked under her license for USC University Hospital. She was fired as an employee on March 17, 2009 for being habitually late. Respondent is the mother of two girls aged 6 and 13. She and her girls – because she suffers from economic hardship – live with other family members.

LEGAL CONCLUSIONS

Violations

1. Respondent is subject to disciplinary action under Business and Professions Code (Code) sections 4301, subdivision (j), for violating Code section 4060, on the grounds of unprofessional conduct by reason of Finding 5, in that on or about December 28, 2008, Respondent was in possession of Methamphetamine, a controlled substance and dangerous drugs, without a valid prescription.

2. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated Health and Safety Code section 11377, subdivision (a), Code section 4060 and Regulation section 1770 by reason of Findings 5 and 8.

Costs

3. Section 125.3 provides, in part, that the Board may request the Administrative Law Judge to direct a licensee 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.

4. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Board must consider a Respondent's ability to pay and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct. (*Zuckerman*, supra at 45.)

5. Respondent's use of the hearing process resulted in the dismissal of the first cause of action (criminal conviction) of the Accusation. Additionally, Respondent established an inability to pay full costs (Finding 14). Applying the rationale and factors of *Zuckerman* recoverable costs are here determined to be the sum of \$500.00.

Licensing Considerations

6. The Board's Disciplinary Guidelines (Guidelines) dated and revised October, 2007 were reviewed and considered by the Administrative Law Judge to determine the appropriate order. Additionally, the objective of a disciplinary proceeding is to protect the public³, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board. The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to Board licensees are designed to protect the public and pharmacies from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated from past unprofessional conduct.

7. Any pharmacist technician who unlawfully possesses a dangerous drug presents a risk to the public, to any employing pharmacy or to any prospective pharmacy patron. Respondent has the burden to establish that she has been properly rehabilitated so that no such risk exists. As is set forth in Findings 10 through 14 Respondent did not meet that burden. Accordingly, the Order which follows is consistent with the Guidelines and is consistent with the public interest.

³ *Camacho v. Youde* (1975) 95 Cal.App3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.

ORDER

1. Pharmacist Technician License No. TCH 46972 previously issued by the Board to Eunice Jasmine Cano is hereby revoked.

2. Respondent shall pay costs in the sum of \$500.00 to the Board at its Sacramento address within sixty (60) days of the effective date of this Decision.

Dated: January 26, 2012


RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:ref