

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

In the Matter of the Accusation Against:

ROSANNE MARIE LAMOTT
315 Young Ct.
Pomona, CA 91766

Pharmacy Technician License No. TCH 33869

Respondent.

Case No. 3552

OAH No. 2010100919

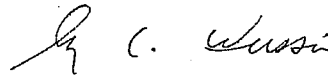
DECISION

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 November 17, 2011.

It is so ORDERED October 18, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

BEFORE THE
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In the Matter of the Accusation Against:

ROSANNE MARIE LAMOTT,

Pharmacy Technician Registration
No. TCH 33869,

Respondent.

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PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on June 3, 2011.

Langston M. Edward, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Rosanne Marie Lamott appeared in propria persona.

Testimonial and documentary evidence was received, the case argued, and the matter submitted for decision on June 3, 2011. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

1. Complainant made the Accusation while acting in her official capacity.
2. On July 11, 2000, the Board of Pharmacy (Board) issued Pharmacy Technician Registration number TCH 33869 to respondent. Respondent's registration is due to expire October 31, 2011.

Cause for Discipline

3. On April 1, 2008, in the Superior Court of California, County of San Bernardino, in case number MCH800124, respondent pled guilty to violating Health and Safety Code section 11550, subdivision (a) (use/under the influence of controlled substance). The court deferred entry of judgment for a period of 18 months on condition that respondent

completes a drug diversion program and pay fees and restitution totaling approximately \$300.

4. Respondent used and was addicted to methamphetamine between 2005 and 2008. As a consequence, respondent lost her part-time pharmacy employment and dropped out of college. She became homeless and sought occasional shelter in motels with other drug users. She, and another individual, was arrested in a motel room where there were plastic bags containing a white crystal substance, drug paraphernalia, money, and a weapon.

Factors in Aggravation and Mitigation

5. Respondent continued to use methamphetamine for several months after entry of her guilty plea as set forth in Factual Finding 3.

6. Respondent failed to appear at a court-ordered diversion hearing, thus causing the court to revoke diversion and to issue a warrant for her arrest. Respondent was arrested on November 4, 2008.

7. Respondent completed a six-month residential diversion program at Walter Hovering Home on June 8, 2009. Having completed diversion, respondent's guilty plea as set forth in Factual Finding 3 was withdrawn and dismissed on March 22, 2010.

8. For approximately 7 years respondent was employed as a pharmacy technician. Currently, respondent is unemployed. She spends her time raising her toddler son. Respondent hopes to resume employment as a pharmacy technician. Respondent is engaged to be married.

9. Respondent testified that in November 2009 she became sober "from everything." She testified that "I have no time for it; I don't desire it; I live a sober life 100%." Respondent offered no evidence of her continuing active involvement in a support group. Respondent relies on her toddler to "keep . . . [her] moving forward and from even thinking of the past."

Costs of Prosecution

10. The Board incurred prosecution costs in the amount of \$5,472. A "Matter Time Activity by Professional Type" documents in detail the date and amount of time that attorney and paralegal personnel worked on this matter. Those costs, established by a Certification of Costs, are deemed reasonable pursuant to Business and Professions Code section 125.3.

LEGAL CONCLUSIONS

Qualifications, Function, and Duties of a Pharmacy Technician

1. Business and Professions Code¹ section 4038 provides that a “Pharmacy technician” means an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties, as specified in Section 4115.”

2. Section 4115 provides, in part, the following:

(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist.

[¶] ... [¶]

(e) No person shall act as a pharmacy technician without first being licensed by the board as a pharmacy technician.

3. Among other things, pharmacists order, furnish, dispense, and administer drug therapies. (See e.g. Bus. & Prof. Code, §§ 4052, 4052.1, 4052.2, 4052.3, 4052.5, and 4052.7.) Pursuant to section 4115, subdivision (a), a pharmacy technician may assist a pharmacist performing those functions.

Statutory Authority to Suspend or Revoke Pharmacy Technician Registration

4. Section 4301 authorizes the Board to take disciplinary action against any licensee who is guilty of “unprofessional conduct.” Unprofessional conduct includes, but is not limited to, the following:

[¶] ... [¶]

(h) The knowing 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.

[¶] ... [¶]

¹ Unless otherwise specified, all statutory references are to the Business and Professions Code.

(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.

[¶] . . . [¶]

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

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

5. California Code of Regulations, title 16, section 1770 provides that “a crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a licensee is to a substantial degree it evidences present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare.”

6. Cause exists to revoke Pharmacy Technician Registration number TCH 33869 issued to respondent Rosanne Marie Lamott pursuant to Business and Professions Code section 4301, subdivisions (h), (j), (o), and (p), and California Code of Regulations, title 16, section 1770, by reason of Factual Finding 3, in that respondent’s use of a controlled substance—methamphetamine—constitutes unprofessional conduct substantially related to the qualifications, functions, and duties of a pharmacy technician as set forth in Legal Conclusions 1 through 3, inclusive. A pharmacy technician must not engage in acts constituting grounds for denial of a license in order to retain a registration. Respondent’s use of methamphetamine constitutes grounds for denial of licensure, and consequently, grounds for suspension or revocation of her registration.

7. A determination that cause exists to suspend or revoke respondent’s pharmacy technician registration does not end the inquiry. Such cause may be overcome with substantial, persuasive evidence of rehabilitation and good character. The Board has compiled a list of factors to evaluate whether a licensee has been rehabilitated from prior misconduct. That list, found in *A Manual of Disciplinary Guidelines and Model Disciplinary Orders* (Revised 10, 2007), and which is incorporated by reference into the Board’s regulations,² includes the nature and severity of the act under consideration; the actual or potential harm to any consumer or to the public; a licensee’s prior disciplinary record; aggravating evidence; rehabilitation evidence; the licensee’s compliance with the terms of any sentence, probation, or parole; the time that has elapsed since commission of the act; and evidence of dismissal of any conviction under Penal Code section 1203.4.

² Cal. Code Regs., tit 16, § 1760.

8. A violation of laws prohibiting the use of a controlled substance such as methamphetamine constitutes "significant misconduct" under the *Guidelines*. After entering a guilty plea to such a violation, respondent not only continued her illicit use of methamphetamine, she initially evaded court-ordered participation in a diversion program. Only three years have lapsed since respondent's misconduct. Her claimed sobriety is recent, and there is no evidence of her continuing participation in any support group addressing the possible life-long risks accompanying drug addiction. Respondent's rehabilitation is nascent, and as such is insufficient to overcome cause for suspension or revocation of her registration.

Cause Exists to Defer an Award Costs

9. Business and Professions Code section 125.3 provides in part as follows:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceeding 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 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

10. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. App. 4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may 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." (*Id.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has

raised a colorable defense. The Board must also consider the licensee's ability to make payment.

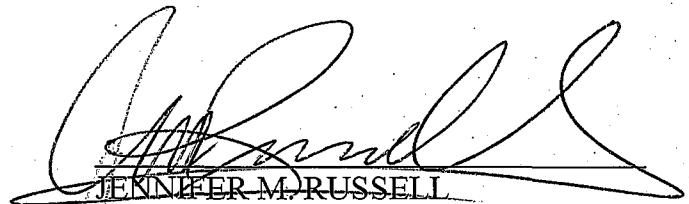
11. Under *Zuckerman*, respondent's economic circumstances, as noted in Factual Finding 8, is reason to defer the Board's assessment of costs. In light of respondent's current unemployment and the likely negative effect that the Order below will have on respondent's earning ability, it would be unduly punitive to require respondent to pay the Board's prosecutorial costs at this time. The Board may order respondent to pay its costs in the amount of \$5,472 at such time and in such manner as the Board may direct, in the event respondent applies for re-licensure.

ORDER

1. Pharmacy Technician Registration number TCH 33869 issued to respondent Rosanne Marie Lamott is revoked.

2. Respondent Roseanne Marie Lamott shall reimburse the Board the amount of \$5,472 at such time and in such manner as the Board in its discretion may direct in the event respondent applies for re-licensure.

DATED: July 29, 2011


JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3552

13 **ROSANNE MARIE LAMOTT**
315 Young Ct.
Pomona, CA 91766

ACCUSATION

14 Pharmacy Technician Registration
No. TCH 33869

15 Respondent.

16
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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 11, 2000, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 33869 to Rosanne Marie Lamott (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2011, unless renewed.

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JURISDICTION

1
2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.
4

STATUTORY PROVISIONS

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

9 5. Section 4300 provides, in pertinent part, that every license issued by the Board is
10 subject to discipline, including suspension or revocation.

11 6. Section 4301 states:

12 "The board shall take action against any holder of a license who is guilty of unprofessional
13 conduct ... Unprofessional conduct shall include, but is not limited to, any of the following:

14

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

20

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

23

24 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of or conspiring to violate any provision or term of this chapter or of the applicable
26 federal and state laws and regulations governing pharmacy, including regulations established by
27 the board or by any other state or federal regulatory agency.

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

FIRST CAUSE FOR DISCIPLINE

(Use/Under Influence of a Controlled Substance)

11. Respondent is subject to disciplinary action under section 4301, subdivision (h) in conjunction with Health and Safety Code section 11550, subdivision (a), and California Code of Regulations, title 16, section 1770, in that Respondent used and/or was under the influence of a controlled substance in a manner as to be dangerous or injurious to herself, or to any other person or to the public.

a. On or about April 1, 2008, Respondent pleaded guilty to violating Health and Safety code section 11550(a) [use/under the influence of controlled substances] in the criminal proceeding entitled *The People of the State of California v. Rosanne Marie Lamott* (Super. Ct. San Bernardino Co., 2008, No. MCH800124). The Court deferred entry of judgment for 18 months pending the court's order that Respondent complete a drug diversion program. The Respondent was also ordered to pay approximately \$300.00 in fees and restitution.

b. The underlying circumstances are that on or about November 27, 2007, during the course of an investigation of a pedestrian by the Chino Police Department, Respondent was contacted by police officers at a Motel 6. The officers smelled a "strong odor of burnt chemicals" emitting from inside the room. Respondent was observed to have a dry mouth and thick speech. Respondent appeared nervous and could not stop fidgeting. Respondent was asked if she was taking any medications and she said she was not. When asked by the police officer, when the last time was that she used any illegal drugs, Respondent admitted that she had smoked "meth" on November 26, 2007 at about 2300 hours and again on November 27, 2007, about four hours prior to the police officer contacting her. Respondent was subsequently arrested for being under the influence of a controlled substance. During the booking procedure, Respondent submitted to a blood test and tested positive for Methamphetamine.

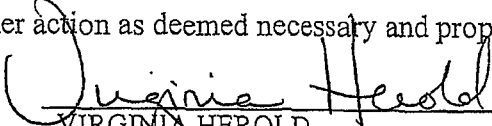
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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 9/26/10



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

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