

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

In the Matter of the Accusation Against:

**ANDREW M. LOVELESS**  
15493 Middletown Park  
Redding, CA 96001

Pharmacy Technician License No. TCH 80976

Respondent.

Case No. 3567

OAH No. 2010060479

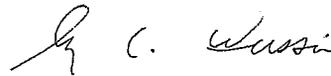
**DECISION**

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 17, 2011.

It is so ORDERED January 18, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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STANLEY C. WEISSER  
Board President

BEFORE THE  
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DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW M. LOVELESS,

Pharmacy Technician Registration  
No. TCH 80976

Respondent.

No. 3567

OAH No. 2010060479

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on December 7, 2010, in Yreka, California.

Kent D. Harris, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

There was no appearance by, or on behalf of Andrew M. Loveless (respondent).

The matter was submitted for decision on December 7, 2010.

**FACTUAL FINDINGS**

1. On April 12, 2010, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board) filed Accusation No. 3567 in her official capacity. Respondent filed a Notice of Defense on May 7, 2010. He provided a different address than his address of record with the Board. The Notice of Hearing was sent via regular and certified mail to the new address provided by respondent. Compliance with the service requirements of Government Code sections 11505 and 11509 was established. This matter proceeded as a default hearing under Government Code section 11520.

2. On February 26, 2008, the Board issued Pharmacy Technician Registration Number TCH 80976 to respondent to work as a pharmacy technician in California. The Pharmacy Technician Registration was in full force and effect at all times pertinent to this matter. It will expire on June 30, 2011, unless renewed.

3. On February 20, 2009, respondent was stopped for speeding by Siskiyou County Sheriff's Deputy Kelly Towers. After a consent search of the vehicle, less than one ounce of marijuana and 7.4 grams of Psilocybin were found. Marijuana is a hallucinogenic and a Schedule I controlled substance under Health and Safety Code section 11054, subdivision (d)(13). Psilocybin, commonly known as "magic mushroom," is a hallucinogenic and a Schedule I controlled substance under Health and Safety Code section 11054, subdivision (d)(18). Respondent admitted that the mushrooms and marijuana belonged to him.

4. Respondent was arrested. On March 15, 2009, he was charged with possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a), a felony; transportation of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a), a felony; and possession of marijuana while driving in violation of Vehicle Code section 23222, subdivision (b), a misdemeanor.

5. On April 8, 2009, the Siskiyou County Superior Court (Case No. YKCRF 09-00387) granted respondent a deferred entry of judgment pursuant to Penal Code section 1000 until October 6, 2010, upon various terms and conditions including the completion of a program in Shasta County and drug testing. If respondent complied with all the conditions imposed by the superior court, the case was to be dismissed on October 6, 2010. No evidence was presented regarding respondent's compliance with the conditions imposed by the superior court, nor was evidence presented on whether the court granted any application for deferred entry of judgment pursuant to Penal Code section 1000.

6. Former Sheriff's Deputy Kelly Towers testified at hearing. He is now a detective with the County of Siskiyou. Detective Towers observed respondent traveling northbound on Highway 5 near Oberlin Road at speeds approaching 90 miles per hours. Respondent was the driver. After stopping the vehicle Detective Towers smelled an odor of marijuana coming from the passenger compartment. He observed a multi-colored glass marijuana smoking pipe in the glove compartment as respondent was retrieving his vehicle registration and proof of insurance. The pipe had a residue in the bowl portion that smelled like marijuana. After further questioning, respondent provided Detective Kelly a small plastic baggie containing a marijuana cigarette. Detective Kelly conducted a probable cause vehicle search and retrieved a brown bag containing three plastic baggies. One baggie contained marijuana, and two baggies contained mushrooms. Respondent admitted they were magic mushrooms. Later identification confirmed that the mushrooms were Psilocybin, weighing 74 grams.

7. The Board incurred costs for the investigation and enforcement of this matter in the amount of \$1,572.50 for the services of the Attorney General. These costs are reasonable.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides in part:

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:

[¶] . . . [¶]

(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.

2. Business and Professions Code section 4060 provides in part:

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.

3. Cause exists to revoke or suspend respondent's pharmacy technician registration pursuant to Business and Professions Code section 4060, in conjunction with Health and Safety Code section 11377, subdivision (a). Respondent unlawfully possessed a non-narcotic controlled substance as set forth in Findings 3 through 6.

4. Cause exists to revoke or suspend respondent's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), for violating Health and Safety Code sections 11377, subdivision (a), and 11379, subdivision (a). Respondent unlawfully possessed and transported a non-narcotic controlled substance as set forth in Findings 3 through 6.

5. Cause exists to revoke or suspend respondent's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (p). Unlawful possession of controlled substances would be grounds for denial of licensure to respondent.

6. Respondent did not appear at the hearing and no evidence of rehabilitation was presented. Based upon the evidence of respondent's conduct on February 20, 2009, the only appropriate disciplinary order is revocation of respondent's pharmacy technician registration.

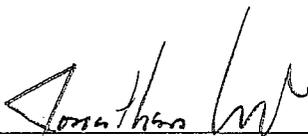
7. Under Business and Professions Code section 125.3, the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Cause to order respondent to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$1,572.50 was established by reason of Finding 7.

#### ORDER

1. Pharmacy Technician Registration No. TCH 80976 issued to respondent Andrew M. Loveless is revoked pursuant to Legal Conclusions 3 through 5, jointly and individually.

2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,572.50.

DATED: December 9, 2010

  
\_\_\_\_\_  
JONATHAN LEW  
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**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3567

12 **ANDREW M. LOVELESS**  
13 **936 State Street**  
**Redding, CA 96001**

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH**  
15 **80976**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about February 26, 2008, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 80976 to Andrew M. Loveless (Respondent). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on June 30, 2011, 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.

4. Section 4300 of the Code states in pertinent part:

"(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.

...

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. Section 4301 of the Code states in pertinent part:

"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:

...

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

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"(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.

6. Section 4060 of the Code states in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician...."

7. 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.

**CONTROLLED SUBSTANCES**

8. **Marijuana** is a hallucinogenic and a Schedule I Controlled Substance pursuant to Health & Safety Code section 11054(D)(13).

9. **Psilocybin** is a hallucinogenic and a schedule I Controlled Substance pursuant to Health & Safety Code section 11054(D)(18).

**FACTUAL BACKGROUND**

10. On or about February 20, 2009, respondent was stopped for speeding by a Siskiyou County Sheriff's Deputy on I-5. After a consent search of the vehicle, an unknown quantity of marijuana and 7.4 grams of Psilocybin Mushrooms (Magic Mushrooms) were found. Respondent admitted that the mushrooms and marijuana belonged to him.

11. Respondent was subsequently arrested and on March 15, 2009 he was charged with possession of a controlled substance in violation of Health & Safety Code section 11377(a) (a felony), transportation of a controlled substance in violation of Health & Safety Code section 11379(a) (a felony), and possession of marijuana while driving in violation of Vehicle Code

1 Section 23222(b) (a misdemeanor), in the case of *People of the State of California vs. Andrew*  
2 *Michael Loveless* Siskiyou County Superior Court case no. YKCRF 09-00387.

3 12. On April 8, 2009 the Siskiyou County Superior Court granted respondent a deferred  
4 entry of judgment pursuant to Penal Code section 1000 until October 6, 2010 upon various terms  
5 and conditions including the completion of a program in Shasta County and drug testing. If  
6 respondent complies with all the conditions imposed by the court, the case will be dismissed on  
7 that date.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Unlawful Possession of Controlled Substances)**

10 13. Respondent is subject to disciplinary action under section 4060 in conjunction with  
11 Health & Safety Code section 11377(a) for unlawful possession of a non-narcotic controlled  
12 substance as set forth in paragraph 10 above.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Violation of Laws Regulating Controlled Substances/Practice of Pharmacy )**

15 14. Respondent is subject to disciplinary action for unprofessional conduct under sections  
16 4301(j) and 4301(o) in conjunction with Health & Safety Code sections 11377(a) and 11379(a) as  
17 set forth above in paragraphs 10 and 11.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Actions or Conduct Which Would Have Warranted Denial of License )**

20 15. Respondent is subject to disciplinary action for unprofessional conduct under section  
21 4301(p) in that unlawful possession of controlled substances as set forth in paragraphs 10 and 13  
22 above would have been grounds for the denial of licensure to respondent.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80976,  
27 issued to Andrew M. Loveless.

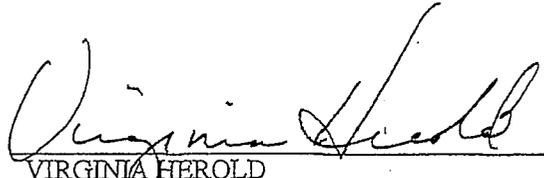
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2. Ordering Andrew M. Loveless to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/6/10



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

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