

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

In the Matter of the Accusation Against:

Case No. 3745

TRACY RAPUE
34-566 Cedar Lane
Yucaipa, CA 92339

Pharmacy Technician License No. TCH 30030
Respondent.

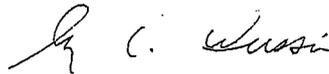
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 22, 2011.

It is so ORDERED on May 23, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3745

11 **TRACY RAPUE**
12 **34566 Cedar Lane**
Yucaipa, CA 92339
13 **Pharmacy Technician License No. TCH**
30030

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 Respondent.
15

16 In the interest of a prompt and speedy settlement of this matter, consistent with the public
17 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
18 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
19 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

20 PARTIES

- 21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Randy M. Mailman, Deputy Attorney
24 General.
- 25 2. Respondent Tracy Rapue is representing herself in this proceeding and has chosen not
26 to exercise her right to be represented by counsel.
27
28

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 30030 issued to
3 Respondent Tracy Rapue is revoked. However, the revocation is stayed and Respondent is placed
4 on probation for four (4) years on the following terms and conditions.

5 **1. Certification Prior to Resuming Work**

6 Respondent shall be automatically suspended from working as a pharmacy technician until he or she
7 is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof
8 of certification to the board. Respondent shall not resume working as a pharmacy technician until notified
9 by the board. Failure to achieve certification within one (1) year shall be considered a violation of
10 probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

11 During suspension, respondent shall not enter any pharmacy area or any portion of any other board
12 licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any
13 drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are
14 maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing,
15 compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board.
16 Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous
17 drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

18 Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed
19 premises by the board in which he or she holds an interest at the time this decision becomes effective
20 unless otherwise specified in this order.

21 Failure to comply with this suspension shall be considered a violation of probation.

22 **2. Obey All Laws**

23 Respondent shall obey all state and federal laws and regulations.

24 Respondent shall report any of the following occurrences to the Board, in writing, within
25 seventy-two (72) hours of such occurrence:

- 26 ■ an arrest or issuance of a criminal complaint for violation of any provision of the
27 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
28 substances laws

- 1 ▪ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
- 2 criminal complaint, information or indictment
- 3 ▪ a conviction of any crime
- 4 ▪ discipline, citation, or other administrative action filed by any state or federal agency
- 5 which involves Respondent's Pharmacy Technician license or which is related to
- 6 the practice of pharmacy or the manufacturing, obtaining, handling, distributing,
- 7 billing, or charging for any drug, device or controlled substance.

8 Failure to timely report any such occurrence shall be considered a violation of probation.

9 **3. Report to the Board**

10 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
11 designee. The report shall be made either in person or in writing, as directed. Among other
12 requirements, Respondent shall state in each report under penalty of perjury whether there has
13 been compliance with all the terms and conditions of probation. Failure to submit timely reports
14 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
15 in submission of reports as directed may be added to the total period of probation. Moreover, if
16 the final probation report is not made as directed, probation shall be automatically extended until
17 such time as the final report is made and accepted by the Board.

18 **4. Interview with the Board**

19 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
20 with the Board or its designee, at such intervals and locations as are determined by the Board or
21 its designee. Failure to appear for any scheduled interview without prior notification to Board
22 staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee
23 during the period of probation, shall be considered a violation of probation.

24 **5. Cooperate with Board Staff**

25 Respondent shall cooperate with the Board's inspection program and with the Board's
26 monitoring and investigation of Respondent's compliance with the terms and conditions of her
27 probation. Failure to cooperate shall be considered a violation of probation.

28 **6. Notice to Employers**

1 During the period of probation, Respondent shall notify all present and prospective
2 employers of the decision in case number 3745 and the terms, conditions and restrictions imposed
3 on Respondent by the decision, as follows:

4 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
5 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
6 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
7 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
8 individual(s) has/have read the decision in case number 3745 and the terms and conditions
9 imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
10 supervisor(s) submit timely acknowledgement(s) to the Board.

11 If Respondent works for or is employed by or through a pharmacy employment service,
12 Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy
13 of the terms and conditions of the decision in case number 3745 in advance of the Respondent
14 commencing work at each pharmacy. A record of this notification must be provided to the Board
15 upon request.

16 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
17 (15) days of Respondent undertaking any new employment by or through a pharmacy
18 employment service, Respondent shall cause her direct supervisor with the pharmacy
19 employment service to report to the Board in writing acknowledging that she has read the
20 decision in case number 3745 and the terms and conditions imposed thereby. It shall be
21 Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
22 acknowledgment(s) to the Board.

23 Failure to timely notify present or prospective employer(s) or to cause that/those
24 employer(s) to submit timely acknowledgements to the Board shall be considered a violation of
25 probation.

26 "Employment" within the meaning of this provision shall include any full-time,
27 part-time, temporary or relief service or pharmacy management service as a pharmacy
28 technician or in any position for which a pharmacy technician license is a requirement

1 or criterion for employment, whether the Respondent is considered an employee,
2 independent contractor or volunteer.

3 **7. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, Respondent shall pay to the
5 Board its costs of investigation and prosecution in the amount \$2,397.50. Respondent shall make
6 payments in accordance with a payment plan that is pre-approved by the Board. The payment
7 plan shall provide that all costs are to be paid in full six months prior to completion of probation.
8 There shall be no deviation from this schedule absent prior written approval by the Board or its
9 designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
10 probation.

11 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility
12 to reimburse the Board its costs of investigation and prosecution.

13 **8. Probation Monitoring Costs**

14 Respondent shall pay any costs associated with probation monitoring as determined by the
15 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
16 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
17 shall be considered a violation of probation.

18 **9. Status of License**

19 Respondent shall, at all times while on probation, maintain an active, current pharmacy
20 technician license with the Board, including any period during which suspension or probation is
21 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

22 If Respondent's pharmacy technician license expires or is cancelled by operation of law or
23 otherwise at any time during the period of probation, including any extensions thereof due to
24 tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all
25 terms and conditions of this probation not previously satisfied.

26 **10. License Surrender While on Probation/Suspension**

27 Following the effective date of this decision, should Respondent cease work due to
28 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,

1 Respondent may tender her pharmacy technician license to the Board for surrender. The Board or
2 its designee shall have the discretion whether to grant the request for surrender or take any other
3 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
4 license, Respondent will no longer be subject to the terms and conditions of probation. This
5 surrender constitutes a record of discipline and shall become a part of the Respondent's license
6 history with the Board.

7 Upon acceptance of the surrender, Respondent shall relinquish her pharmacy technician
8 license to the Board within ten (10) days of notification by the Board that the surrender is
9 accepted. Respondent may not reapply for any license, permit, or registration from the Board for
10 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
11 applicable to the license sought as of the date the application for that license is submitted to the
12 Board.

13 **11. Notification of a Change in Name, Residence Address, Mailing Address or
14 Employment**

15 Respondent shall notify the Board in writing within ten (10) days of any change of
16 employment. Said notification shall include the reasons for leaving, the address of the new
17 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
18 shall further notify the Board in writing within ten (10) days of a change in name, residence
19 address and mailing address, or phone number.

20 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
21 phone number(s) shall be considered a violation of probation.

22 **12. Tolling of Probation**

23 Except during periods of suspension, Respondent shall, at all times while on probation, be
24 employed as a pharmacy technician in California for a minimum of 20 hours per calendar month.
25 Any month during which this minimum is not met shall toll the period of probation, i.e., the
26 period of probation shall be extended by one month for each month during which this minimum is
27 not met. During any such period of tolling of probation, Respondent must nonetheless comply
28 with all terms and conditions of probation.

1 Should Respondent, regardless of residency, for any reason (including vacation) cease
2 working as a pharmacy technician for a minimum of 20 hours per calendar month in California,
3 Respondent must notify the Board in writing within ten (10) days of cessation of work and must
4 further notify the Board in writing within ten (10) days of the resumption of the work. Any
5 failure to provide such notification(s) shall be considered a violation of probation.

6 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
7 provisions of this condition for a total period, counting consecutive and non-consecutive months,
8 exceeding thirty-six (36) months.

9 "Cessation of work" means calendar month during which Respondent is not
10 working for at least 20 hours as a pharmacy technician, as defined in Business and
11 Professions Code section 4115. "Resumption of work" means any calendar month
12 during which Respondent is working as a pharmacy technician for at least 20 hours as
13 a pharmacy technician as defined by Business and Professions Code section 4115.

14 **13. Violation of Probation**

15 If a Respondent has not complied with any term or condition of probation, the Board shall
16 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
17 until all terms and conditions have been satisfied or the Board has taken other action as deemed
18 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
19 to impose the penalty that was stayed.

20 If Respondent violates probation in any respect, the Board, after giving Respondent notice
21 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
22 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
23 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
24 a petition to revoke probation or an accusation is filed against Respondent during probation, the
25 Board shall have continuing jurisdiction, and the period of probation shall be automatically
26 extended until the petition to revoke probation or accusation is heard and decided.

27 **14. Completion of Probation**

28 Upon written notice by the Board indicating successful completion of probation,

1 Respondent's pharmacy technician license will be fully restored.

2 **15. No Ownership of Licensed Premises**

3 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
4 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
5 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell
6 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)
7 days following the effective date of this decision and shall immediately thereafter provide written
8 proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide
9 documentation thereof shall be considered a violation of probation.

10 **16. Community Services Program**

11 Within sixty (60) days of the effective date of this decision, respondent owner shall submit to the
12 board or its designee, for prior approval, a community service program in which respondent shall provide
13 free health-care related services to a community or charitable facility or agency for at least 50 hours per
14 year for the first two years of probation.

15 Within thirty (30) days of board approval thereof, respondent owner shall submit documentation to
16 the board demonstrating commencement of the community service program. Respondent owner shall
17 report on progress with the community service program in the quarterly reports.

18 Failure to timely submit, commence, or comply with the program shall be considered a violation of
19 probation.

20 ACCEPTANCE

21 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
22 stipulation and the effect it will have on my Pharmacy Technician License. I enter into this
23 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
24 to be bound by the Decision and Order of the Board of Pharmacy.

25
26 DATED:

2-20-11

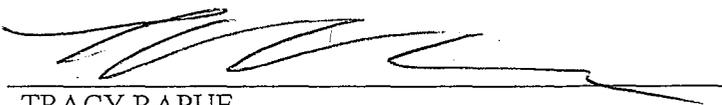

TRACY RAPUE
Respondent

Exhibit A

Accusation No. 3745

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2 GREGORY J. SALUTE
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7 *Attorneys for Complainant*

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14 **34-566 Cedar Lane**
15 **Yucaipa, CA 92339**

ACCUSATION

16 **Pharmacy Technician License**
17 **No. TCH 30030**

Respondent.

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 20, 1999, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician License No. TCH 30030 to Tracy Rapue ("Respondent"). The Pharmacy Technician
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on November 30, 2010, unless renewed.

26 ///

27 //

28

1 JURISDICTION

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 ("Code") unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

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

10 5. Section 490 states:

11 "(a) In addition to any other action that a board is permitted to take
12 against a licensee, a board may suspend or revoke a license on the ground that the
13 licensee has been convicted of a crime, if the crime is substantially related to the
14 qualifications, functions, or duties of the business or profession for which the
15 license was issued.

16 (b) Notwithstanding any other provision of law, a board may exercise
17 any authority to discipline a licensee for conviction of a crime that is independent
18 of the authority granted under subdivision (a) only if the crime is substantially
19 related to the qualifications, functions, or duties of the business or profession for
20 which the licensee's license was issued.

21 (c) A conviction within the meaning of this section means a plea or
22 verdict of guilty or a conviction following a plea of nolo contendere. Any action
23 that a board is permitted to take following the establishment of a conviction may
24 be taken when the time for appeal has elapsed, or the judgment of conviction has
25 been affirmed on appeal, or when an order granting probation is made suspending
26 the imposition of sentence, irrespective of a subsequent order under the provisions
27 of Section 1203.4 of the Penal Code."

28 6. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
license issued by the Board.

7. Section 4301 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:

.....

1 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
3 whether the act is a felony or misdemeanor or not.

4

5 (1) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.”

22 **REGULATORY PROVISIONS**

23 8. California Code of Regulations, title 16, section 1770, states:

24 "For the purpose of denial, suspension, or revocation of a personal or facility license
25 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
26 crime or act shall be considered substantially related to the qualifications, functions or duties of a
27 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
28

1 licensee or registrant to perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare."

3 **COST RECOVERY**

4 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Criminal Conviction)**

10 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
11 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
12 that Respondent was convicted of a crime which is substantially related to the qualifications,
13 functions, or duties of a pharmacy technician, as follows:

- 14 a. On or about January 5, 2009, in the criminal proceeding entitled *The People of the State*
15 *of California vs. Tracy Rapue* (Super. Ct. County of San Bernardino, 2009, No.
16 FSB804285) Respondent was convicted of one felony count of violating Penal Code
17 section 550(b)(1) [insurance fraud]. Respondent was sentenced to 90 days in jail and
18 served 3 days and placed on probation for a period of 36 months with certain terms and
19 conditions. The circumstances surrounding the conviction are that on or about January
20 17, 2008 through April 3, 2008, Respondent unlawfully conspired together with two
21 other suspects to commit insurance fraud. Respondent owns a PT Cruiser that she
22 reported stolen when in fact it had not been stolen but had been given to others.
23 Respondent reported the vehicle stolen to police agencies and to her insurance
24 company, and gave a false statement to her insurance company in support of that claim.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Dishonest Acts)**

27 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
28 that Respondent committed dishonest acts by conspiring together with two other suspects to

1 commit insurance fraud. Complainant refers to, and by this reference incorporates, the
2 allegations set forth above in paragraph 10, subparagraph (a), inclusive, as though fully set forth.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

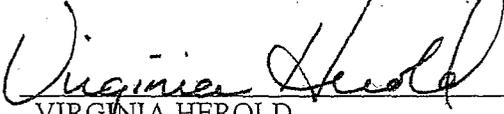
5 12. Respondent is subject to disciplinary action under section 4301 on the grounds of
6 unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations
7 set forth above in paragraph 10, subparagraph (a), inclusive, as though fully set forth.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

- 11 1. Revoking or suspending Pharmacy Technician License No. TCH 30030, issued to
12 Tracy Rapue;
- 13 2. Ordering Tracy Rapue to pay the Board the reasonable costs of the investigation and
14 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 11/2/10

17 
18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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