

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

In the Matter of the Statement of Issues
Against:

RUBY JEAN WILLIAMS
12750 Hickory Avenue
Victorville, CA 92395

Case No. 3738

OAH No. 2011010818

Respondent.

DECISION AFTER NONADOPTION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on August 10, 2011.

Michelle McCarron, Deputy Attorney General, and Patricia Ford, a student intern, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Ruby Jean Williams (Respondent) was present and represented herself.

Oral and documentary evidence was received

The case was submitted for decision on August 10, 2011.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy on August 31, 2011. After due consideration thereof, the Board of Pharmacy declined to adopt said proposed decision and thereafter on November 29, 2011 issued an Order of Non-adoption and subsequently on December 20, 2011 issued an Order Fixing Date for Submission of Argument. No written arguments having been received from either party and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board of Pharmacy pursuant to Section 11517 of the Government Code hereby makes the following decision:

PARTIES

1. Complainant filed the Statement of Issues in this proceeding in her official capacity.

2. On December 22, 2009, the Board received an application for registration as a Pharmacy Technician from Ruby Jean Williams. On December 15, 2009, Respondent certified, under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on May 3, 2010 and Respondent requested this hearing.

FACTUAL FINDINGS

3. On September 5, 2006, in the California Superior Court, County of San Bernardino, in case number MV1048675, Respondent, upon her nolo contendere plea, was convicted of violating Health and Safety Code section 11550, subdivision (a), under the influence of controlled substance, a misdemeanor. The court withheld pronouncement of judgment and placed Respondent on revocable release for a period of 1½ years, upon certain terms and conditions including completing a drug diversion program. (Pen. Code, § 1000). The court specified that, if Respondent submitted proof of completion of the program within 18 months, the court would withdraw the guilty plea and dismiss the case. Respondent submitted proof of the completion of the program on April 26, 2007. On March 29, 2010, the Court, finding that Respondent had successfully completed the Terms of Diversion, dismissed all charges against Respondent and expunged her record.

4. The criminal case against Respondent arose when she was with some of her friends who were undergoing drug tests during a parole compliance check for the San Bernardino Sheriff's Department on March 16, 2006. (Ex., 5.) Respondent was observed to be under the influence of a controlled substance. She was taken into custody.

5. Respondent admits that she began using methamphetamines¹ in 1999, when she was sixteen years old. (RT 47:3-7.) She continued that use until she learned that she was pregnant with her son. According to Respondent, her entire life changed. She stopped her use of drugs and now has a completely different group of friends. Her sobriety date was June 28, 2006.

6. As noted above, Respondent participated in the drug diversion program ordered by the Superior court ("Court"). During that time, she attended meetings of Alcoholics Anonymous and Narcotics Anonymous. Drug tests she was given during this period were negative. However, Respondent has never participated in any kind of treatment program that was not ordered by the Court (RT 51:4-6). Additionally, Respondent has only gone to about "five or six" Narcotics Anonymous (N.A.) meetings

¹ Methamphetamine is a Schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (d)(2).

since the Court ordered treatment in 2006, and has never worked the "steps" to recovery or obtained a sponsor. (RT 51:10-25.)

7. Respondent resumed her education. On June 24, 2009, Respondent was issued a High School Equivalency Certificate. She also was awarded a Certificate of Competency as a Pharmacy Technician and completed a course in the Principles of Real Estate.

8. Respondent is enrolled as a student at the San Joaquin Valley College where she completed a course on the Health Insurance Portability and Accountability Act. She is on the Dean's List of the college. She also received a Certificate of Achievement for completing a writing study plan.

9. Five letters of reference praising Respondent's work as a student and person were submitted from Respondent's instructors and teachers at San Joaquin Valley College.

10. Respondent participated in a Pharmacy Technician Internship at a Walgreens store in Antelope Valley.

11. Respondent's mother testified in support of Respondent's license application. She testified that Respondent no longer uses drugs. She also noted that Respondent has worked very hard to be able to apply for the requested license.

LEGAL CONCLUSIONS

The Burden of Proof

1. The Administrative Procedure Act (Gov. Code, §§ 11500 et seq.) provides that the burden of proof is upon the applicant seeking licensure. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 476-477.) Specifically, Government Code section 11504 states:

"A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which *the respondent must show compliance by producing proof at the hearing* and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought." (Emphasis added.)

2. "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code, § 115.)

Grounds for Denial

3. Section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

.....

(3) (A) done any act that if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of license...

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, function, or duties of the business or profession for which the application is made.

4. Section 492 states:

Notwithstanding any other provision of law, successful completion of any diversion program under Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50 of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding, that evidence of that misconduct may be recorded in a record pertaining to an arrest. This section shall not be construed to apply to any drug diversions program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

5. Although grounds for denial exist, the Board may still issue a probationary license on terms and conditions of probation. (Bus. & Prof. Code, § 4300(c).) Additionally, section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

6. Section 4301 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:

.....

(h) The 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.

(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.

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

7. Respondent's application is subject to denial under Business and Professions Code sections 4300, 4301, subdivisions (h), (j), and (p) and 480, subdivision (a)(3)(A) and (B), in that Respondent committed acts which constituted unprofessional conduct and, if done by a licentiate, would be grounds for suspension or revocation of her license, in that Respondent was under the influence of a controlled narcotic substance (CNS) stimulants more fully disclosed in Factual Findings 3 through 6.

Licensing Considerations

8. California Code of Regulations, title 16, section 1769, subdivision (a), requires the Board to consider the following when considering the denial of a license:

(1) The nature and severity of the act(s) or offenses under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or denial under section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referenced to in subdivision (1) or (2).

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

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

9. Although there was no evidence presented of re-occurrence, the nature of Respondent's past misconduct is serious. Although pharmacy technicians are not independent practitioners and work under the close supervision of registered pharmacists, technicians have access to controlled substances as a consequence of their employment. As a result, pharmacy technicians hold positions of trust and are expected to strictly adhere to rules involving controlled substances and not work while impaired. Pharmacy technicians are also expected to exercise good judgment at all times for the protection of the public. Illegal use of methamphetamine over an extensive period of time, at the very least, demonstrates an inability to follow the rules and a lack of good judgment. (Factual Findings 3-6.)

10. However, this misconduct occurred over five years ago and Respondent has demonstrated that she has taken responsibility for her actions and has submitted evidence of rehabilitation. Respondent admitted to seven years of methamphetamine use during a rebellious part of her youth. However, upon becoming pregnant with her son, she made a dramatic change in her life. She completed a drug diversion program on April 26, 2007 and criminal charges against her were dismissed. She has no other criminal convictions. She has a new group of friends and has enrolled in school taking courses to qualify her for better jobs and income potential. She has made the Dean's List for academic accomplishment. She earned a Certificate of Competency as a Pharmacy Technician. Her professors and teachers submitted letters of recommendation on her behalf praising her abilities. (Factual Findings 5-11.)

11. Regardless, Respondent's lengthy history of drug use and failure to submit evidence that she has participated in any kind of treatment program or recovery groups since her 2006 court-mandated program is of concern to the Board. (Factual Findings 5, 6.) Under these circumstances, it would not be appropriate to grant an unrestricted license in this case. It is concluded that Respondent's license should be issued, however, the license should be revoked, the order of revocation stayed, and Respondent's registration placed on three years' probation on terms and conditions that will assure the protection of the public. This conclusion is based upon all of the Factual Findings and Legal Conclusions.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a Pharmacy Technician license shall be issued to Respondent and immediately revoked, the order of revocation is stayed and Respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Certification Prior to Work

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

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

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

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

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or,
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling,

distributing, billing, or charging for any drug, device or controlled substance.

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

3. Report to the Board

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

4. Interview with the Board

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

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 3738 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3738 (OAH 2011010818) and the terms and conditions imposed thereby. It

shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3738 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 3738 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

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

7. Probation Monitoring Costs

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

8. Status of License

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

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

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the Board.

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

10. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

11. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times

respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

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

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

12. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

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

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

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

14. Notification of Departure

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

15. Tolling of Probation

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

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

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

"Cessation of work" means calendar month during which respondent is not working for at least twenty (20) hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least twenty (20) hours as a pharmacy technician as defined by Business and Professions Code section 4115.

16. Violation of Probation

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

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

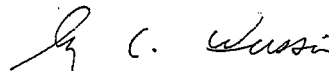
17. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

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 Statement of Issues Against:

Ruby Jean Williams
12750 Hickory Avenue
Victorville, CA 92395

Pharmacy Technician Applicant

Respondent.

Case No. 3738

OAH No. 2011010818

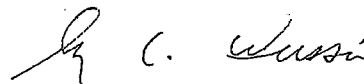
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER OF NONADOPTION OF PROPOSED DECISION

YOU ARE HEREBY NOTIFIED pursuant to Section 11517 of the Government Code, the California State Board of Pharmacy hereby non-adopts the proposed decision in Statement of Issues Case number 3738. A copy of the proposed decision is attached hereto.

The board will decide the case itself upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Board has ordered the transcript and will notify the parties when the transcript has been prepared and of the date for submission of written argument.

IT IS SO ORDERED THIS 29th day of November 2011.



STANLEY C. WEISSER
President
State Board of Pharmacy

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

In the Matter of the Statement of Issues
Against:

RUBY JEAN WILLIAMS
12750 Hickory Avenue
Victorville, CA 92395

Case No. 3738

OAH No. 2011010818

Respondent.

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 10, 2011.

Michelle McCarron Deputy Attorney General, and Patricia Ford, a student intern, represented Virginia Herold (Complainant) Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Ruby Jean Williams (Respondent) was present and represented herself.

Oral and documentary evidence was received

The case was submitted for decision on August 10, 2011.

PARTIES

1. Complainant filed the Statement of Issues in this proceeding in her official capacity.
2. On December 22, 2009, the Board received an application for registration as a Pharmacy Technician from Ruby Jean. On December 15, 2009, Respondent certified, under penalty of perjury to the truthfulness of all statements, answers, and representations

in the application. The Board denied the application on May 3, 2010 and Respondent requested this hearing.

FACTUAL FINDINGS

3. On September 5, 2006, in the California Superior Court, County of San Bernardino, in case number MV1048675, Respondent, upon her nolo contendere plea, was convicted of violating Health and Safety Code section 11550, subdivision (a), under the influence of controlled substance, a misdemeanor. The court withheld pronouncement of judgment and placed Respondent on revocable release for a period of 1 ½ years, upon certain terms and conditions including completing a drug diversion program. (PC1000). The court specified that, if Respondent submitted proof of completion of the program within 18 months, the court would withdraw the guilty plea and dismiss the case. Respondent submitted proof of the completion of the program on April 26, 2007. On March 29, 2010, the Court, finding that Respondent had successfully completed the Terms of Diversion, dismissed all charges against Respondent.

4. The criminal case against Respondent arose when she with some of her friends who were undergoing drug tests. Respondent was observed to be under the influence of a controlled substance. She was taken into custody.

5. Respondent admits that she began using methamphetamines¹ in 1999. She continued that use until she learned that she was pregnant with her son. According to Respondent her entire life changed. She stopped her use of drugs and now has a completely different group of friends. Her sobriety date is June 28, 2006.

6. As noted above, Respondent participated in the drug diversion program ordered by the court. During that time, she attended meetings of Alcoholics Anonymous and Narcotics Anonymous. Drug tests she was given during this period were negative.

7. Respondent resumed her education. On June 24, 2009, Respondent was issued a High School Equivalency Certificate. She also was awarded a Certificates of Competency as a Pharmacy Technician and completed a course in the Principles of Real Estate.

8. Respondent is enrolled as a student at the San Joaquin Valley College where she completed a course on the Health Insurance Portability and Accountability Act. She is on the Dean' List of the college. She also received a Certificate of Achievement for completing a writing study plan.

¹ Methamphetamine is a schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (d) (2).

9. Five letters of reference praising Respondent's work as a student and person were submitted from Respondent's instructors and teachers at San Joaquin Valley College.

10. Respondent participated in a Pharmacy Technician Internship at a Walgreens store in Antelope Valley.

11. Respondent's mother testified in support of Respondent's license application. She testified that Respondent no longer uses drugs. She also noted that Respondent has worked very hard to be able to apply for the requested license.

STATUTORY PROVISIONS

1. This Statement of Issues is brought before the Board under the authority of the following statutes and regulations. All references are to Business and Professions Code unless otherwise indicated.

2. Section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(3) (A) done any act that if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of license..

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, function, or duties of the business or profession for which the application is made.

3. Section 492 states:

Notwithstanding any other provision of law, successful completion of any diversion program under Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50 of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding, that evidence of that misconduct may be recorded in a record pertaining to an arrest. This section shall not be construed to apply to any drug diversions program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

4. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or revoked.”
5. Section 4301 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:

(h) The 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.

(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..

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

LEGAL CONCLUSIONS

1. Respondent’s application is subject to denial under Business and Professions Code sections 4300, 4301, subdivisions (h), (j), and (p) and 480, subdivision (a) (3) (A) and (B), in that Respondent committed acts which constituted unprofessional conduct and, if done by a licentiate, would be grounds for suspension or revocation of her license, in that Respondent was under the influence of a controlled narcotic substance (CNS) stimulants more fully disclosed in Factual Findings 3 through 6.

2. Respondent admitted to seven years of methamphetamine use during a rebellious part of her youth. However, upon becoming pregnant with her son, she made a dramatic change in her life. She completed a drug diversion program on April 26, 2007 and criminal charges against her were dismissed. She has no other criminal convictions. She has a new group of friends and has enrolled in school taking courses to qualify her for better jobs and income potential. She has made the Dean’s List for academic accomplishment. She earned a Certificate of Competency as a Pharmacy Technician. Her professors and teachers submitted letters of recommendation in her behalf praising her abilities. While grounds exist to deny Respondent’s license application, given these circumstances, a probationary license is appropriate and consistent with the Board’s responsibilities to the public.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a Pharmacy Technician license shall be issued to Respondent and immediately revoked, the order of revocation is stayed and Respondent is placed on probation for three (3) year upon the following terms and conditions:

1. Certification Prior to Work

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

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

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

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

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

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

3. Report to the Board

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

4. Interview with the Board

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

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 3738 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3738 (OAH 2011010818) and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If Respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3738 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 3738 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

7. Probation Monitoring Costs

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

8. Status of License

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

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

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her pharmacy technician license to the board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the board.

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

10. Random Drug Screening

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the Respondent.

Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

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

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

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

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

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

12. Notification of Departure

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

13. Tolling of Probation

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

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

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

"Cessation of work" means calendar month during which respondent is not working for at least _ (to be specified) _____ hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least _ ((to be specified) _____ hours as a pharmacy technician as defined by Business and Professions Code section 4115.

14. Violation of Probation

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

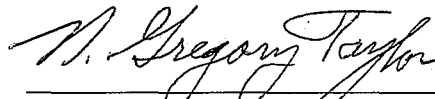
If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the board shall

have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation

Upon written notice by the board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

Dated: August 29, 2011.



N. GREGORY TAYLOR

Administrative Law Judge

Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MARC D. GREENBAUM
Supervising Deputy Attorney General
4 State Bar No. 138213
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2579
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
Against:
12 **RUBY JEAN WILLIAMS**
13 12750 Hickory Avenue
14 Victorville, CA 92395
15 Respondent.

Case No. 3738
STATEMENT OF ISSUES

16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about December 22, 2009, the Board of Pharmacy (Board) received an
22 application for registration as a Pharmacy Technician from Ruby Jean Williams (Respondent).

23 On or about December 15, 2009, Respondent certified under penalty of perjury to the truthfulness
24 of all statements, answers, and representations in the application. The Board denied the
25 application on May 3, 2010.

26 ///
27 ///
28 ///

JURISDICTION

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

5 4. Section 480 states, in pertinent part:

6 "(a) A board may deny a license regulated by this code on the grounds that the applicant
7 has one of the following:

8

9 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
10 would be grounds for suspension or revocation of license.

11 (B) The board may deny a license pursuant to this subdivision only if the crime or act
12 is substantially related to the qualifications, functions, or duties of the business or profession for
13 which application is made."

14 5. Section 492 states:

15 "Notwithstanding any other provision of law, successful completion of any diversion
16 program under the Penal Code, or successful completion of an alcohol and drug problem
17 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
18 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
19 commencing with Section 500) of this code, or any initiative act referred to in that division, from
20 taking disciplinary action against a licensee or from denying a license for professional
21 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
22 pertaining to an arrest. This section shall not be construed to apply to any drug diversion program
23 operated by any agency established under Division 2 (commencing with Section 500) of this
24 code, or any initiative act referred to in that division."

25 6. Section 4300 provides in pertinent part, that every license issued by the Board is
26 subject to discipline, including suspension or revocation.

27 7. Section 4301 states, in pertinent part:

28 "The board shall take action against any holder of a license who is guilty of unprofessional

1 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
2 Unprofessional conduct shall include, but is not limited to, any of the following:

3

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

9

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

12

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

14 8. **CONTROLLED SUBSTANCE**

15 "Methamphetamine," is a schedule II controlled substance as defined in Health and Safety
16 code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section 4022 of the
17 Code.

18 **CAUSE FOR DENIAL OF APPLICATION**

19 **(Acts Warranting Denial of Licensure)**

20 5. Respondent's application is subject to denial under sections 4301, subdivision (p) and
21 480; subdivision (a)(3)(A) and (B), in that Respondent committed acts which if done by a
22 licentiate would be grounds for suspension or revocation of his license, as follows.

23 a. On or about March 16, 2006, during a parole compliance check by the San
24 Bernardino Sheriff's Department of Dennis M., Respondent was contacted. While speaking to
25 Respondent, she displayed signs and symptoms of being under the influence of a controlled
26 narcotic substance (CNS) stimulant. Respondent had severe eyelid flutter, a white coated tongue,
27 and an elevated pulse. She admitted to the police officer that she had just used methamphetamine.

28 ///

1 Respondent was subsequently arrested for, a violation of Health and Safety Code section 11550,
2 subdivision (a) (under the influence of a controlled narcotic substance).

3 b. Respondent used and was under the influence of a controlled narcotic substance, to
4 wit: Methamphetamine, in violation of section 4301, subdivisions (h) and (j).

5 PRAYER

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

- 8 1. Denying the application of Respondent for Registration as a Pharmacy Technician;
9 2. Taking such other and further action as deemed necessary and proper.

10 DATED: 11/2/10



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

26 LA2010503491
27 50726978.doc
(jz/mc-9/3/10)