

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

In the Matter of the Accusation Against:

Case No. 4399

TANYA ELISE ARMSTRONG

401 Garfield Ave.
Kansas City, MO 64124

OAH No. 2014050635

**Pharmacy Technician Registration
Number TCH 61344**

Respondent.

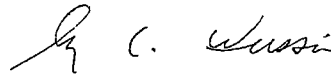
DECISION AND ORDER

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

This decision shall become effective on February 19, 2015.

It is so ORDERED on January 20, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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In the Matter of the Accusation Against:

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PROPOSED DECISION

This matter was heard on October 20, 2014, at Los Angeles, California by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California. Respondent Tanya Elise Armstrong participated by telephone. Complainant Virginia Herrold was represented by Deputy Attorney General Matthew A. King (DAG King) and by Adam Vankorlaar, a law clerk certified to represent complainant under the supervision of Mr. King.

Oral and documentary evidence was presented. The record was held open for receipt of additional documents, received as follows. Respondent was to submit additional exhibits by November 10, 2014, and complainant could submit a reply by November 25, 2014. Respondent did not submit anything directly to OAH. Respondent had a friend email a reference letter to DAG King on November 20, 2014. On November 25, DAG King filed his opposition, including a copy of the reference letter, which is marked for identification as complainant's exhibit 6. The reference letter of Martha Enriquez is marked for identification as respondent's exhibit A.

The matter was submitted for decision on November 25, 2014.

Evidentiary Rulings

Respondent appeared for the hearing by telephone. There was no objection by complainant. Respondent's participation by telephone is authorized under Government Code section 11440.30.

Respondent had not seen all of the documentary evidence submitted by complainant. Nevertheless, respondent was sufficiently familiar with exhibits 1 through 4, or the

information contained therein, that these exhibits could be received in evidence on complainant's motion. (Exhibit 1 was received for jurisdictional purposes only; for exhibit 3, a police report, portions were received as administrative hearsay.)¹ Exhibit 5 for identification is a Certification of Prosecution Costs submitted in support of complainant's request in the Accusation for an award of the costs of prosecution under Business and Professions Code section 125.3. Respondent had not seen the document, and complainant was ordered to serve a copy on respondent. Complainant served a copy of exhibits 1 through 5 on respondent on November 6, 2014. Although respondent was allowed to file any response or objection, she did not. Exhibit 5 is therefore received in evidence.

Complainant objects to the reference letter of Martha Enriquez (exhibit A for identification) on the grounds that it was filed late and is hearsay. While the timeliness objection is supported by the facts, it is overruled for purposes of allowing respondent to present rehabilitation evidence. Further, although complainant's time to respond was compressed by virtue of the untimeliness, nevertheless complainant submitted a timely and useful response. The hearsay objection is sustained; the reference letter will be admitted in evidence under the limitations of administrative hearsay.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. The Accusation was filed by complainant Virginia Herrold in her official capacity as Executive Officer of the Board of Pharmacy (Board).
2. On March 3, 2005, the Board issued Pharmacy Technician Registration number TCH 61344 to respondent. The registration expired on October 31, 2012. Under the authority of Business and Professions Code section 4402, subdivision (e), discussed in more detail below, the registration was cancelled on February 3, 2013. The Board has continuing jurisdiction over the cancelled license.
3. On April 1, 2011, respondent was stopped at a DUI checkpoint where a County Sheriff's Deputy observed behavior that raised the Deputy's suspicions of drug use. The Deputy questioned respondent about her use of drugs. Respondent first denied drug use, then after further questions respondent replied that she smoked marijuana earlier that day. The Deputy observed further behavior that added to the officer's suspicions of the use of drugs other than

¹ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

marijuana. The Deputy voiced her suspicion that respondent had recently used methamphetamine. Respondent initially denied such use. According to the Deputy, respondent ultimately admitted to smoking methamphetamine earlier that day. According to respondent, she did not admit to the Deputy that she had smoked methamphetamine that day. It is not necessary to resolve this conflict in the evidence. At the hearing, respondent acknowledged that she had used methamphetamine the prior day, by snorting it (inhaling it through her nostrils), and that she had never smoked methamphetamine. Respondent submitted to a blood test, which returned positive findings for the presence of amphetamines and cannabinoids

4. The marijuana and methamphetamine had not been prescribed or recommended for respondent's use.

5. Respondent's registration as a pharmacy technician allows her to have access to controlled substances and dangerous drugs in a pharmacy. All work by a pharmacy technician must be supervised by a pharmacist.

6. Respondent has worked under her registration for many years, sometimes as the lead pharmacy technician and with a lot of responsibilities. At the time of her arrest, respondent was working part time at a retail pharmacy, however she was on vacation. By a plea agreement the criminal charges were dropped and respondent was issued a citation for the infraction of failing to come to a full stop. Respondent has no other criminal record. She admitted to recreational use of marijuana and methamphetamine starting about six months prior to her arrest, at the urging of friends. She stopped using marijuana and methamphetamine when she was arrested, except for one further incident of smoking marijuana in August 2011 when she was depressed about her license situation, her loss of her job, and the pending charges. In her words, she had given up, but was then given another chance by the court, and has not used illegal drugs again.

7. Respondent attended one meeting of Narcotics Anonymous and then decided to seek counseling through her church. Lead by her pastor, the process was not a formal drug program. There was no drug testing. It was more in the nature of general religious counseling, and respondent found it beneficial.

8. In April 2014 respondent moved to Missouri to live with her mother and start a college level program in registered nursing. She was informed by the program that she could not begin due to a "health care sanction" on her record relating to her pharmacy registration in California. Respondent would like to have the health care sanction removed so that she can enter this program.

9. Respondent returned to California in August 2014 where she has the support of her sisters. She has two children but receives no support from their father. Respondent volunteers at her children's school. Respondent works part time and makes enough money to cover her rent (she shares a house) and food. She does not own a car. She lives "paycheck to paycheck." Respondent is in a school program to learn barbering and cosmetology and hopes to obtain a license.

10. Respondent accepts responsibility for her actions and admits that she made a mistake. She states she does not want her pharmacy technician registration back but, rather, wants the health care sanction removed in hopes that she can enter the nursing program. Respondent acknowledged that she may have had a drug problem at one time, but her overall use was limited to occasional use over a period of several months, and she was not impaired while at work.

11. The reference letter from Martha Enriquez confirms that respondent has expressed remorse for her actions and has made positive changes in her life.

12. The evidence of costs of prosecution includes 33.75 hours of work by Deputies Attorney General, at a rate of \$170 per hour, and 14.25 hours by Legal Analysts, at a rate of \$120 per hour, for a total request of \$7,447.50.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

1. Jurisdiction exists and the Board can proceed in this matter, despite the expiration and cancellation of respondent's registration. Under Business and Professions Code section 118, the expiration or cancellation of a license does not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Business and Professions Code section 4402, subdivision (b), (1) the Board may cancel a pharmacist assistant registration if it is not renewed within 60 days of expiration, (2) a canceled registration may not be renewed, and (3) a new application is required. Under Business and Professions Code section 4300.1, the expiration or cancellation of a Board license shall not deprive the Board of the jurisdiction to suspend or revoke a license.

2. Under Business and Professions Code section 4301, the Board may take action against a licensee for unprofessional conduct under the following subdivisions:

Subdivision (h), for "administering to oneself, of any controlled substance, the use any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself"

Subdivision (j), for violating statutes regulating controlled substances and dangerous drugs.

Subdivision (o), for violating statutes and regulations governing pharmacy.

Subdivision (p), for any actions that would warrant denial of a license.

3. Under Health and Safety Code sections 11007, 11504, subdivision (d)(13), and 11505, marijuana is a Schedule I controlled substance and a dangerous drug, and methamphetamine is a Schedule II controlled substance and a dangerous drug. Under Health and Safety Code section 11352, it is against the law to administer these controlled substances unless there is a valid prescription.

4. Cause exists to suspend or revoke respondent's registration as a pharmacy technician for violating Business and Professions Code section 4301, subdivisions (h), (j) and (o), for unprofessional conduct by virtue of respondent's illegal use of controlled substances and dangerous drugs, as set forth in Findings 3 and 4.

5. Cause exists to suspend or revoke respondent's registration as a pharmacy technician for violating Business and Professions Code section 4301, subdivision (p), in that respondent committed unprofessional conduct for violating statutes that would warrant denial of a license, as set forth in Findings 3 and 4.

6. 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. The prosecution costs of \$7,447.50, as noted in Factual Finding 12, are reasonable.

7. Consideration would be given to issuing a probationary registration due to several factors, including the limited period of respondent's drug use, the minor criminal sanction imposed instead for a traffic violation, respondent's numerous years of unblemished service under her registration, and her sincere statement of remorse and acceptance of responsibility. However, due to the cancellation of respondent's pharmacy technician registration, she has no current licensing status on which to affix probationary terms. Further, respondent is not interested in regaining her registration. Under the circumstances, the continuing jurisdiction allows revocation of the registration, which is appropriate under all of the circumstances.

8. Unfortunately, there is no jurisdiction in this proceeding to grant respondent's request to remove the health care sanction. Hopefully the conclusion of these proceedings will permit the nursing program in Missouri to reconsider whether respondent can enter the program.

9. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Among other things, the licensing agency must consider a respondent's ability to pay and may not


assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman, supra* at 45.) Respondent established that she has no ability to pay costs at this time. Therefore, she will be ordered to pay costs if in the future she seeks reinstatement or other licensure from the Board.

ORDER

Pharmacy Technician Registration number TCH 61344, issued to respondent Tanya Armstrong is revoked.

If respondent seeks reinstatement of her registration, or other licensure from the Board in the future, she shall pay the costs established in this matter in the amount of \$7,447.50, under a payment plan to be approved by the Board.

DATED: December 22, 2014.


DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4399

12 **TANYA ELISE ARMSTRONG**
13 7113 Victoria Ave
Highland, CA 92346

A C C U S A T I O N

[Gov. Code, § 11503.]

14 **Pharmacy Technician Registration No. TCH**
15 **61344**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Complainant Virginia K. Herold brings this Accusation solely in her official capacity
20 as the Executive Officer of the California State Board of Pharmacy, an agency under the
21 Department of Consumer Affairs.

22 2. On March 3, 2005, the Board issued Pharmacy Technician Registration Number TCH
23 61344 to Respondent Tanya Elise Armstrong. The Pharmacy Technician Registration was in full
24 force and effect at all times relevant to the charges brought herein and expired on October 31,
25 2012. The Board cancelled the license on February 3, 2013 for non-renewal. Notwithstanding
26 the cancellation of the license, the Board has jurisdiction to proceed under Business and
27 Professions Code sections 4300, subdivision (a), and 4300.1.

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 unless otherwise indicated.

4 4. Section 118, subdivision (b), states, in relevant part, that the suspension, expiration,
5 surrender or cancellation of a license does not deprive the Board of jurisdiction to proceed with a
6 disciplinary action during the period within which the license may be renewed, restored, reissued
7 or reinstated.

8 5. Section 4300 of the Code states, in relevant part, that the Board may suspend or
9 revoke any license it has issued. Section 4300 also states that proceedings to suspend or revoke a
10 license must be conducted in accordance with the Administrative Procedure Act, beginning with
11 Government Code section 11500.

12 6. Section 4300.1 of the Code states:

13 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
14 operation of law or by order or decision of the board or a court of law, the placement of a license
15 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
16 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
17 proceeding against, the licensee or to render a decision suspending or revoking the license."

18 **STATUTORY PROVISIONS**

19 7. Section 4022 states, in relevant part, that a "dangerous drug" or "dangerous device" is
20 any drug or device that is unsafe for self-use in humans or animals and includes prescription
21 drugs.

22 8. Section 4301 of the Code states in relevant part:

23 "The board shall take action against any holder of a license who is guilty of unprofessional
24 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
25 Unprofessional conduct shall include, but is not limited to, any of the following:

26 ...

27 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
28 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to

1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the
3 practice authorized by the license.

4 ...

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

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

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

12 9. Health and Safety Code section 11007 states:

13 "Controlled substance," unless otherwise specified, means a drug, substance, or immediate
14 precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."

15 10. Health and Safety Code section 11352 states, in relevant part:

16 "(a) Except as otherwise provided in this division, every person who...administers...(1)
17 any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision
18 (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section
19 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of
20 Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a
21 narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
22 veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to
23 subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

24 (b) Notwithstanding the penalty provisions of subdivision (a), any person who transports
25 for sale any controlled substances specified in subdivision (a) within this state from one county to
26 another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of
27 Section 1170 of the Penal Code for three, six, or nine years."

28 ///

1 REGULATORY PROVISIONS

2 11. California Code of Regulations, title 16, section 1770, states:

3 “For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare.”

9 COST RECOVERY

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

14 DRUG CLASSIFICATIONS

15 13. Marijuana is a Schedule I controlled substance and a dangerous drug. (Health & Saf.
16 Code, § 11054, subd. (d)(13); Bus. & Prof. Code, § 4022.)

17 14. Methamphetamine is a Schedule II controlled substance and a dangerous drug.
18 (Health & Saf. Code, § 11055, subd. (d)(2).)

19 FIRST CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct—Marijuana and Methamphetamine Use)

21 15. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
22 conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
23 conduct in that Respondent illegally used marijuana and methamphetamine and used said
24 substances in a manner and to an extent as to be dangerous or injurious to herself and to the
25 public.

26 16. On Friday, April 1, 2011, Respondent was stopped at a DUI checkpoint at Redlands
27 Boulevard and Curtis Street in Loma Linda. A San Bernardino County Sheriff’s officer noted that
28 Respondent looked nervous and avoided eye contact with him. The officer questioned

1 Respondent about her use of drugs and Respondent replied that she smoked marijuana shortly
2 before the stop. The officer ordered Respondent out of the car to better evaluate her physical
3 condition. Respondent's eyes fluttered and the officer saw a white coating on Respondent's
4 tongue. Respondent's pulse was 112 beats per minute. The officer voiced his suspicion that
5 Respondent had recently used methamphetamine. After first denying the charge, Respondent
6 admitted that she smoked methamphetamine earlier in the day. Respondent submitted to a blood
7 test, which returned positive for amphetamines and cannabinoids.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Violation of State Law Regulating Marijuana and Methamphetamine)**

10 17. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
11 conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
12 conduct in that Respondent violated State statutes regulating controlled substances and dangerous
13 drugs. In particular, Respondent self-administered marijuana and methamphetamine in
14 contravention of Health and Safety Code sections 11007 and 11352. Complainant realleges
15 paragraphs 15-16.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violation of Pharmacy Law)**

18 18. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
19 conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
20 conduct in that Respondent violated provisions of the Pharmacy Law. Complainant realleges
21 paragraphs 15-17.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Commission of Acts That Would Have Warranted Denial of Licensure)**

24 19. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
25 conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
26 conduct in that Respondent committed acts that, if committed by an applicant, would have
27 warranted denial of licensure. Complainant realleges paragraphs 15-18.

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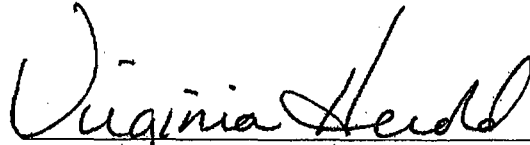
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 61344, issued to Tanya Elise Armstrong;
2. Ordering Tanya Elise Armstrong to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

12/6/13



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

LA2012507680