

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

In the Matter of the Statement of Issues
Against:

**JENNIFER CRISTINE NEWTON
aka JENNIFER CRISTINE WACHTA
aka JENNIFER CRISTINE RAMOS,
5024 Ashmead Drive
Hemet, CA 92544**

Case No. 4484

OAH No. 2013050574

Respondent.

FINAL DECISION AFTER RECONSIDERATION

This matter came on regularly for hearing on March 5, 2014, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Desiree I Kellogg, Deputy Attorney General, Department of Justice, represented Virginia Herold (complainant), the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (board).

Jennifer Cristine Newton, aka Jennifer Cristine Wachta, aka Jennifer Cristine Ramos (respondent) represented herself.

Oral and documentary evidence was presented. The record remained open until March 14, 2014. Respondent was permitted to submit additional evidence by March 12, 2014, and complainant was given until March 14 to file a response to any additional evidence submitted by respondent.

Respondent timely submitted additional documents; complainant did not file a response or otherwise object to the additional evidence. The documents were marked and admitted into evidence as follows: Exhibit A consisted of materials relative to respondent's completion of the educational requirements for certification as a pharmacy technician and her certification by the Pharmacy Technician Certification Board (PTCB); Exhibit B consisted of documents related to respondent's externship

and was admitted as administrative hearsay; Exhibit C consisted of respondent's transcript from Four-D College; and Exhibit D consisted of a letter dated June 20, 2011 from PTCB and was admitted as administrative hearsay.

On March 14, 2014, the record was closed, and the matter was submitted.

The Administrative Law Judge issued her Proposed Decision on April 11, 2014. The Proposed Decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("board"), and after due consideration thereof, the board adopted the proposed decision on May 27, 2014 to become effective on June 26, 2014. On June 6, 2014, Complainant filed a Petition for Reconsideration. On June 16, 2014, the board issued an Order Granting Petition for Reconsideration and Stay of Execution of the Effective date of Decision and Order. On September 12, 2014, the board issued an Order Fixing Date for Submission of Argument.

Written argument having been received from Complainant 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, pursuant to Government Code section 11517, hereby decides this matter as follows:

FACTUAL FINDINGS

1. By letter dated October 2, 2011, respondent advised the board that she had completed the coursework to become a pharmacy technician and was applying for licensure as a pharmacy technician. In the letter she also disclosed that she had a criminal conviction for being in possession of hypodermic needles and attached documentation that she had successfully completed probation, including the payment of all required fines and fees.
2. On October 31, 2011, respondent signed a Pharmacy Technician Application under penalty of perjury. In her application, respondent disclosed that she incurred a criminal conviction in 2007.
3. The board received respondent's application on November 14, 2011.
4. By letter dated July 16, 2012, the board requested that respondent provide additional information about a statement she made to police in January 2006 that she had a "drug problem for the past 14 years." The board requested evidence that respondent "sought and/or completed" drug treatment. The board also invited respondent to submit additional information such as letters of recommendation, work evaluations and other evidence that she was rehabilitated.
5. Respondent responded to the board by letter. She wrote that in January 2006, when she was arrested, she had been addicted to methamphetamine for 14 years. She stated that she had been clean and sober since June 2006, but that she

“never completed any drug rehabs for this.” She stated that she had worked for Direct Towing for four years and was currently working for Home Depot. She indicated that she did not have any letters of recommendation or work evaluations to submit.

6. The board denied respondent’s application on August 30, 2012, based upon her arrest and conviction.

7. By letter dated October 8, 2012, respondent appealed the denial of her application and requested a hearing. In the letter she stated that she was “federally certified as a pharmacy technician”

8. On April 19, 2013, complainant signed the Statement of Issues in Case No. 4484; it, and other required jurisdictional documents, were served on respondent on May 1, 2013. The Statement of Issues requested that ~~that~~ respondent’s application be denied because of her 2007 conviction for being in possession of hypodermic needles. The Statement of Issues did not allege that respondent abused, or was addicted to, illegal drugs, nor did it allege that respondent engaged in unprofessional conduct.

2007 Conviction for Possession of Hypodermic Needle

9. At 10:00 p.m. on January 28, 2006, while on patrol, a Riverside Police Officer observed a moving vehicle without its headlights illuminated. When the police officer pulled the vehicle over, the driver advised the officer that the vehicle belonged to respondent and that there was drug paraphernalia in the vehicle that belonged to her; respondent was not in the vehicle. The police officer contacted respondent and she admitted that the vehicle and three hypodermic needles in it belonged to her. Respondent voluntarily told the police officer that she had had a drug problem for 14 years.

10. Respondent was given a citation that required her to report to court on March 16, 2006, to respond to the citation. A criminal complaint, Riverside County Superior Court case number RIM473702, was subsequently issued by the Riverside District Attorney’s Office. On March 16, 2006, respondent failed to appear for her arraignment and the court issued a bench warrant for her arrest.

11. On January 2, 2007, respondent appeared in the Riverside Superior Court where she pled guilty to, and was convicted of, one misdemeanor count of possession of hypodermic needles, in violation of Business and Professions Code section 4140. The court placed respondent on three years informal probation with terms and conditions, including the requirement that she pay fines and fees in the amount of \$501.00 and serve one day in custody, with credit for time served.

12. In October 2008, respondent made an oral motion requesting early termination of probation. Her motion was denied. Respondent has fully paid all fines and fees associated with her conviction.

2011 Repeal of Business and Professions Code section 4140

13. Business and Professions Code section 4140, which made the possession of hypodermic needles unlawful, was repealed in 2011; section 4145.5 was enacted in its place. Section 4145.5, subdivision (b), provides:

Notwithstanding any other provision of law, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other blood borne diseases . . . a physician or pharmacist may, without a prescription or a permit, furnish 30 or fewer hypodermic needles and syringes for human use to a person 18 years of age or older, and a person 18 years of age or older may, without a prescription or license, obtain 30 or fewer hypodermic needles and syringes solely for personal use from a physician or pharmacist.

Expert Testimony

14. Complainant called Brandon K. Mutrux, PharmD, as an expert witness. Dr. Mutrux holds a Doctorate of Pharmacy and has been registered with the California Board of Pharmacy since 2008. He is currently employed with the Board of Pharmacy as a Pharmacy Inspector.

Dr. Mutrux testified that pharmacy technicians receive 240 hours of instruction in pharmacy practices through vocational or community college courses. Pharmacy technicians are not certificated by the federal government but they can obtain a nationally recognized certification.

Licensed pharmacy technicians work under the supervision of a registered pharmacist and have open access to controlled substances, dangerous drugs and pharmaceutical devices. They also have access to confidential information contained in patient records. Pharmacy technicians must possess the characteristics of honesty and integrity. They must exercise good judgment and adhere to statutes and regulations regulating pharmacy operations. Pharmacy technicians who abuse substances are particularly dangerous to the public and to themselves because they have easy access to drugs and dangerous devices, and they may attempt to perform their job duties while they are impaired.

Evidence in Mitigation and of Rehabilitation

15. Respondent is 33 years old and she is married. She admitted that she used illegal drugs, primarily methamphetamine, "off and on" from the time she was 10 years old until she was 26 years old. She denied that she injected the drugs, but she did not explain why she had hypodermic needles in her possession in 2006.

Respondent stated that she did not attend her arraignment in March 2006 because she was using drugs.

16. On direct examination, respondent testified that she did not complete any rehabilitation programs, nor did she attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA); however, on cross examination, respondent stated that she had enrolled in rehabilitation programs in 2003, 2004 and 2005, but she did not successfully complete those programs. Respondent admitted to short periods of sobriety followed by relapses. She also attended NA in 2004 for a brief period of time, but then relapsed. Respondent had no documentation relating to the drug rehabilitation programs she attended or her short-lived participation in NA.

17. Respondent testified that the last time she used illegal drugs was May 2006. She considers her sobriety date to be June 2006 because she calculated that it took about a month to get the drugs out of her system. Respondent stated that she passed a drug test in May 2007 to obtain a job with a towing company. She did not provide documentation to corroborate her former employment or the drug screening she passed.

18. Respondent recognized that she failed in her prior attempts at sobriety because she had not distanced herself from those around her who continued to use illegal drugs. When she finally determined that she wanted to be drug-free, she cut all ties to the people "in that world."

Respondent made significant changes in her life. She moved out of the city and "disconnected to everyone and everything that was connected to [her other] life."

19. Respondent felt she was misled by the school in which she received her training to become a pharmacy technician. She told the school authorities about her criminal conviction and they assured her that it would not prevent her from becoming licensed as a pharmacy technician.

20. Respondent enrolled in Four-D College in February 2011. She passed a drug test to enroll. She completed her course work with a 3.95 grade point average. She took and passed the PTCB examination and was certified by them. She stated that, until the hearing, she did not understand the difference between a "federal" certificate and a "national" certificate and that she did not intend to mislead the board when she referred to her certificate from PTCB as federally recognized. Her testimony on this point was credible.

21. In February 2012, respondent was hired at Home Depot. She is a part time electrical associate and also works in the bookkeeping and human resource departments. She testified that the trust placed in her by her employer was demonstrated by the fact that her work in the bookkeeping and human resource departments exposes her to sensitive personnel and financial matters concerning the store and its employees. Respondent did not provide any documentation to

corroborate her employment and/or the type and quality of work she performs; however, she testified credibly about her employment.

22. Respondent received numerous certificates for quarterly and monthly academic excellence and monthly perfect attendance from Four – D College where she completed her coursework to become a pharmacy technician. Her transcript from Four – D College confirmed that she graduated from the nine month program with a 3.95 grade point average.

Respondent participated in a two month externship at a Walgreen’s store in San Bernardino, California. She received positive comments in her externship evaluation, including that she had “great confidence and self-esteem to succeed as [a] pharm[acy] tech[nician].”

23. Respondent’s husband, Ricky Angel (Angel), testified at the hearing. He and respondent have been married for seven years and purchased a home in Hemet, California. Angel is a former police officer and investigator. He said he would not be with respondent if she was the person that she was in 2006. He confirmed that he and respondent had moved away from the people and drug culture respondent had previously been involved with. He also felt that respondent was misled by the school she attended when they told her she could be registered and work as a pharmacy technician.

LEGAL CONCLUSIONS

Disciplinary Guidelines

1. The Board of Pharmacy Disciplinary Guidelines, October 2007 (Guidelines), provide that the board “serves the public by: protecting the health, safety, and welfare of the people of California with integrity and honesty”

2. The Guidelines provide that the following factors should be considered when determining the level of discipline¹ to be imposed in a disciplinary case:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations

¹ The Guidelines contain a list of factors that are to be considered in determining the discipline of a holder of a certificate or license; however, it is found that consideration of those factors is also appropriate when determining whether to grant a registration or license.

6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

Applicable Statutory and Regulatory Provisions

3. Business and Professions Code section 475 provides, in part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

[¶] . . . [¶]

(2) Conviction of a crime.

[¶] . . . [¶]

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

4. Business and Professions Code section 480, subdivision (a)(1), provides that a license may be denied when an applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

5. Business and Professions Code section 480, subdivision (b), provides:

Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that . . . she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a

person when considering the denial of a license under subdivision (a) of Section 482.

6. Business and Professions Code section 482 requires the Board to “develop criteria to evaluate the rehabilitation of a person when (a) considering the denial of a license” under section 480. Section 482 also requires the Board to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

7. Business and professions Code section 4022, subdivisions (b) and (c) provide that a “dangerous device” is a device that is unsafe for self-use including

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006

8. Business and professions Code section 4300, subsection (c), provides that the board “may refuse a license to any applicant guilty of unprofessional conduct” or it can issue of a probationary license if the applicant “has met all other requirements for licensure.” When issuing a probationary license, the board may require to applicant to comply with terms or conditions of probation.

9. Business and professions Code section 4202, subdivision (a) provides:

(a) The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a general educational development certificate equivalent, and meets any one of the following requirements:

(1) Has obtained an associate’s degree in pharmacy technology.

(2) Has completed a course of training specified by the board.

(3) Has graduated from a school of pharmacy recognized by the board.

(4) Is certified by the Pharmacy Technician Certification Board.

10. Business and professions Code section 4301 provides, in part, that the “board shall take action against any holder of a license who is guilty of unprofessional conduct” Unprofessional conduct includes, but is not limited to

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of . . . a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

[¶] . . . [¶]

(o) Violating . . . any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

. . .

11. California Code of Regulations, title 16, section 1769, subdivision (a), provides:

(a) When considering the denial of a . . . personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) 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 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) referred 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.

12. California Code of Regulations, title 16, section 1770 provides:

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

Discipline Determination

13. Cause exists to deny respondent's Pharmacy Technician Application pursuant to Business and Professions Code sections 475 and 480 because on January 2, 2007, she was convicted of unlawful possession of hypodermic needles, a crime substantially related to the qualifications, duties, and functions of a pharmacy technician.

When contacted by police in 2006, respondent was forthright, and she candidly admitted that she had a long-standing drug problem. She was open and honest about her drug abuse history in her communications with the board. She was straightforward and truthful about her drug abuse history and her failure at rehabilitative efforts prior to June 2006 in her testimony at the hearing. Respondent's admitted fourteen-year history of drug abuse and her failure to successfully complete drug rehabilitation rightfully is a cause of concern for the board.

14. The purpose of an administrative proceeding seeking the denial of an occupational license or registration is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

15. The determination of whether respondent should be granted a license includes an evaluation of the rehabilitation criteria set forth in California Code of Regulations, title 16, section 1769, subdivision (a). Additionally, the board's Guidelines have been considered in determining whether to grant respondent's application for a pharmacy technician license.

Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he or she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

Here, the nature and severity of Respondent's conviction and her lengthy and chronic history of drug abuse warrant denial. Respondent was convicted of possessing illegal drug paraphernalia – hypodermic needles. Respondent testified at hearing that after being cited, she failed to appear at her arraignment because she was under the influence of drugs for many more months despite her criminal proceedings. This resulted in the issuance of a bench warrant for Respondent's arrest. Respondent testified that she illegally used drugs, primarily methamphetamines for fourteen or sixteen years, beginning at the age of ten, once a day.

Respondent candidly acknowledged her past drug abuse and her failed attempts at rehabilitation prior to 2006. Respondent's criminal conviction was in 2007 and related to events that occurred in January 2006 – eight years ago. Further, although Respondent testified that she successfully completed her studies to become a pharmacy technician and had been employed at a home improvement retailer and towing company, Respondent provided no character references from anyone related to her studies or employment. Respondent presented no evidence to show she was rehabilitated from and no longer using illegal drugs or engaging in any activity related to the illegal use of drugs. Respondent testified at hearing that she had not completed any type of drug rehabilitation programs. Although Respondent testified she enrolled in several drug treatment programs, she offered no evidence or documentation verifying this testimony. Respondent testified that she has removed sources of temptation and severed social ties with former friends and acquaintances with whom she took illegal drugs, but again failed to present any corroborating evidence or testimony, other than that of her husband, to show she no longer engages in the activity of using illegal drugs. Based on a review of the evidence presented, there is insufficient evidence of Respondent's rehabilitation.

16. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy technicians have access to confidential personal and financial information of consumers and to highly regulated medications and devices. If a pharmacy technician has already illegally used drugs for fourteen to sixteen years, the temptation to use more drugs illegally may be present when drugs are so accessible. Pharmacy technicians must also be able to adhere strictly to all rules and regulations involving controlled substances since they are employed in a highly regulated industry. Respondent's illegal use of methamphetamines demonstrates that she cannot comply with those standards.

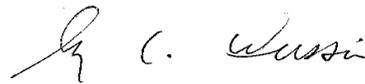
Moreover, Respondent's illegal use of methamphetamines and possession of drug paraphernalia and fraternizing with known drug users for sixteen years, demonstrates Respondent lacks good judgment. Pharmacy technicians hold positions of trust and cannot always be watched by pharmacists; therefore, it is imperative that a pharmacy technician evidence good judgment at all times, which Respondent has not shown. Thus, Respondent has not shown by a preponderance of the evidence that she is rehabilitated or possesses present fitness for registration.

ORDER

Respondent Jennifer Cristine Newton, aka Jennifer Cristine Wachta, aka Jennifer Cristine Ramos's Pharmacy Technician Application is denied.

This decision shall become effective on January 9, 2015.

IT IS SO ORDERED this 10th day of December, 2014.



STAN C. WEISSER
PRESIDENT

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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following change is made to paragraph one on page four under Expert Testimony:

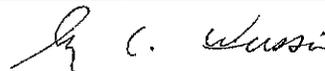
“Complainant called Brandon K. Mutrux, PharmD, as an expert witness. Dr. Mutrux holds a Doctorate of Pharmacy and has been registered with the California Board of Pharmacy since 2008. He is currently employed with the Board of Pharmacy as a Pharmacy Inspector.”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on June 26, 2014.

IT IS SO ORDERED this 27th day of May, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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16. On direct examination, respondent testified that she did not complete any rehabilitation programs, nor did she attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA); however, on cross examination, respondent stated that she had enrolled in rehabilitation programs in 2003, 2004 and 2005, but she did not successfully complete those programs. Respondent admitted to short periods of sobriety followed by relapses. She also attended NA in 2004 for a brief period of time, but then relapsed. Respondent had no documentation relating to the drug rehabilitation programs she attended or her short-lived participation in NA.

17. Respondent testified that the last time she used illegal drugs was May 2006. She considers her sobriety date to be June 2006 because she calculated that it took about a month to get the drugs out of her system. Respondent stated that she passed a drug test in May 2007 to obtain a job with a towing company. She did not provide documentation to corroborate her former employment or the drug screening she passed.

18. Respondent recognized that she failed in her prior attempts at sobriety because she had not distanced herself from those around her who continued to use illegal drugs. When she finally determined that she wanted to be drug-free, she cut all ties to the people “in that world.”

Respondent made significant changes in her life. She moved out of the city and “disconnected to everyone and everything that was connected to [her other] life.”

19. Respondent felt she was misled by the school in which she received her training to become a pharmacy technician. She told the school authorities about her criminal conviction and they assured her that it would not prevent her from becoming licensed as a pharmacy technician.

20. Respondent enrolled in Four-D College in February 2011. She passed a drug test to enroll. She completed her course work with a 3.95 grade point average. She took and passed the PTCB examination and was certified by them. She stated that, until the hearing, she did not understand the difference between a “federal” certificate and a “national” certificate and that she did not intend to mislead the board when she referred to her certificate from PTCB as federally recognized. Her testimony on this point was credible.

21. In February 2012, respondent was hired at Home Depot. She is a part time electrical associate and also works in the bookkeeping and human resource departments. She testified that the trust placed in her by her employer was demonstrated by the fact that her work in the bookkeeping and human resource departments exposes her to sensitive personnel and financial matters concerning the store and its employees. Respondent did not provide any documentation to corroborate her employment and/or the type and quality of work she performs; however, she testified credibly about her employment.

22. Respondent received numerous certificates for quarterly and monthly academic excellence and monthly perfect attendance from Four –D College where she completed her coursework to become a pharmacy technician. Her transcript from Four –D College confirmed that she graduated from the nine month program with a 3.95 grade point average.

Respondent participated in a two month externship at a Walgreen’s store in San Bernardino, California. She received positive comments in her externship evaluation, including that she had “great confidence and self-esteem to succeed as [a] pharm[acy] tech[nician].”

23. Respondent’s husband, Ricky Angel (Angel), testified at the hearing. He and respondent have been married for seven years and purchased a home in Hemet, California. Angel is a former police officer and investigator. He said he would not be with respondent if she was the person that she was in 2006. He confirmed that he and respondent had moved away from the people and drug culture respondent had previously been involved with. He

also felt that respondent was misled by the school she attended when they told her she could be registered and work as a pharmacy technician.

LEGAL CONCLUSIONS

Disciplinary Guidelines

1. The Board of Pharmacy Disciplinary Guidelines, October 2007 (Guidelines), provide that the board “serves the public by: protecting the health, safety, and welfare of the people of California with integrity and honesty”

2. The Guidelines provide that the following factors should be considered when determining the level of discipline¹ to be imposed in a disciplinary case:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

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¹ The Guidelines contain a list of factors that are to be considered in determining the discipline of a holder of a certificate or license; however, it is found that consideration of those factors is also appropriate when determining whether to grant a registration or license.

Applicable Statutory and Regulatory Provisions

3. Business and Professions Code section 475 provides, in part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

[¶] . . . [¶]

(2) Conviction of a crime.

[¶] . . . [¶]

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

4. Business and Professions Code section 480, subdivision (a)(1), provides that a license may be denied when an applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate salesperson.

5. Business and Professions Code section 480, subdivision (b), provides:

Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that . . . she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

6. Business and Professions Code section 482 requires the Board to "develop criteria to evaluation the rehabilitation of a person when (a) considering the denial of a license" under section 480. Section 482 also requires the Board to "take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Business and professions Code section 4022, subdivisions (b) and (c) provide that a "dangerous device" is a device that is unsafe for self-use including

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with

the designation of the practitioner licensed to use or order use of the device.

c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006

8. Business and professions Code section 4301, subsection (c), provides that the board “may refuse a license to any applicant guilty of unprofessional conduct” or it can issue of a probationary license if the applicant “has met all other requirements for licensure.” When issuing a probationary license, the board may require to applicant to comply with terms or conditions of probation.

9. Business and professions Code section 4202, subdivision (a) provides:

(a) The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a general educational development certificate equivalent, and meets any one of the following requirements:

(1) Has obtained an associate’s degree in pharmacy technology.

(2) Has completed a course of training specified by the board.

(3) Has graduated from a school of pharmacy recognized by the board.

(4) Is certified by the Pharmacy Technician Certification Board.

10. Business and professions Code section 4301 provides, in part, that the “board shall take action against any holder of a license who is guilty of unprofessional conduct” Unprofessional conduct includes, but is not limited to

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of . . . a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the

qualifications, functions, and duties of a licensee under this chapter. . . .

[¶] . . . [¶]

(o) Violating . . . any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. . . .

11. California Code of Regulations, title 16, section 1769, subdivision (b), provides:

(b) When considering the denial of a . . . personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) 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 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) referred 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.

12. California Code of Regulations, title 16, section 1770 provides:

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

perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

Evaluation

13. Cause exists to deny respondent's Pharmacy Technician Application pursuant to Business and Professions Code sections 475 and 480 because on January 2, 2007, she was convicted of unlawful possession of hypodermic needles, a crime substantially related to the qualifications, duties, and functions of a pharmacy technician.

When contacted by police in 2006, respondent was forthright, and she candidly admitted that she had a long-standing drug problem. She was open and honest about her drug abuse history in her communications with the board. She was straightforward and truthful about her drug abuse history and her failure at rehabilitative efforts prior to June 2006 in her testimony at the hearing. Respondent's admitted fourteen-year history of drug abuse and her failure to successfully complete drug rehabilitation rightfully is a cause of concern for the board.

However, respondent was not charged in the Statement of Issues with abusing drugs, having a drug addiction, or engaging in unprofessional conduct. No evidence was presented that, since June 2006, respondent abused drugs or was addicted to drugs. The fact that respondent successfully completed the coursework for a pharmacy technician and graduated with an outstanding grade point average strongly suggests she is a highly functioning individual and is no longer addicted to drugs. Additionally, respondent successfully completed an externship in a pharmacy and passed the PTCB examination to obtain her pharmacy technician certificate. She has been gainfully employed and, in her current position, is entrusted with matters that are sensitive and confidential.

Respondent is married and has removed herself from the friends and environment that contributed to her drug abuse. She was open and honest in the hearing, and her testimony was credible.

Discipline Determination

14. The purpose of an administrative proceeding seeking the denial of an occupational license or registration is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

15. The determination of whether respondent should be granted a license includes an evaluation of the rehabilitation criteria set forth in California Code of Regulations, title 16, section 1769, subdivision (b). Additionally, the board's Guidelines have been considered in determining whether to grant respondent's application for a pharmacy technician license.

Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he or she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

Respondent is commended for acknowledging her past drug abuse and for her forthrightness in admitting her failed attempts at rehabilitation prior to 2006. Respondent's criminal conviction was in 2007 and related to events that occurred in January 2006 – eight years ago. Respondent was not charged with having a drug addiction, either in the criminal proceedings or in the Statement of Issues. It is through her own candor and disclosures that her drug addiction history was known to the police and to the board. Certainly respondent could easily have deflected her then boyfriend's assertion that the hypodermic needles in her vehicle were hers since he admitted to being under the influence when he was driving respondent's car at night– without her in it – without illuminating the headlights. However, respondent then, as in the hearing, admitted her mistakes and took responsibility for them.

Respondent was convicted of possessing hypodermic needles. It is difficult to determine how respondent could show she was rehabilitated from this offense, which is no longer unlawful. Although respondent's drug abuse history was not alleged as a basis for the denial of her application, she addressed the issue at the hearing and appeared sincere in her resolve to remain drug-free. No evidence was presented to establish that respondent has had any involvement with drugs or law enforcement after June 2006. She has successfully complied with the terms and conditions of her criminal probation, including payment of all fines and fees. She has successfully completed her studies to become a pharmacy technician. She has been gainfully employed. Significantly, respondent removed sources of temptation and severed social ties with former friends and acquaintances with whom she took illegal drugs. Respondent is married and her husband is supportive of her clean and sober lifestyle. She and her husband moved away from the drug culture she once was a part of.

16. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy technicians have access to confidential personal and financial information of consumers and to highly regulated medications and devices. Respondent is found to have the essential personal characteristics to enable her to be a successful pharmacy technician.

Upon consideration of the entirety of the facts and the application of the disciplinary criteria, protection of the public will not be compromised if respondent is granted a pharmacy technician registration.

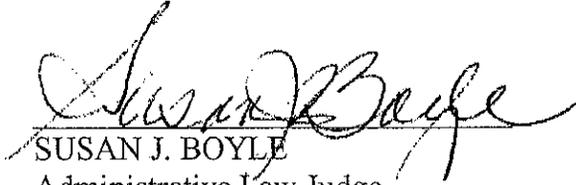
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ORDER

Respondent Jennifer Cristine Newton, aka Jennifer Cristine Wachta, aka Jennifer Cristine Ramos's Pharmacy Technician Application is granted.

DATED: April 11, 2014


SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Statement of Issues Against:

Case No. 4484

12 **JENNIFER CRISTINE NEWTON**
13 **aka JENNIFER CRISTINE WACHTA**
aka JENNIFER CRISTINE RAMOS

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration Applicant**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 14, 2011, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Jennifer Cristine
24 Newton (Respondent). On or about October 31, 2011, Jennifer Cristine Newton certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on August 30, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct.

5. Section 475 of the Code states, in pertinent part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

.....

(2) Conviction of a crime.

.....

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

.....

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

STATUTORY PROVISIONS

6. 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:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

.....

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

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

4 (b) Notwithstanding any other provision of this code, no person shall be
5 denied a license solely on the basis that he or she had been convicted of a felony if
6 he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
7 with Section 4852.01 of Title 6 of Part 3 of the Penal Code or that he or she has
8 been convicted of a misdemeanor if he or she has met all applicable requirements of
the criteria of rehabilitation developed by the board to evaluate the rehabilitation of
9 a person when considering the denial of a license under subdivision (a) of Section
482.

.....

10 7. Section 482 of the Code states:

11 Each board under the provisions of this code shall develop criteria to evaluate
the rehabilitation of a person when:

12 (a) Considering the denial of a license by the board under Section 480; or

13 (b) Considering suspension or revocation of a license under Section 490.

14 Each board shall take into account all competent evidence of rehabilitation
15 furnished by the applicant or licensee.

16 8. Section 4022 of the Code states:

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use, except veterinary drugs that are labeled as such, and includes the following:

18 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
19 without prescription," "Rx only," or words of similar import.

20 (b) Any device that bears the statement: "Caution: federal law restricts this
21 device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to use
or order use of the device.

22 (c) Any other drug or device that by federal or state law can be lawfully
23 dispensed only on prescription or furnished pursuant to Section 4006.

24 9. Section 4140 of the Code states:

25 No person shall possess or have under his or her control any hypodermic needle
26 or syringe except when acquired in accordance with this article.
27
28

10. Section 4301 of the Code 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:

....

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

....

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

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) 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 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) referred to in subdivision (1) or (2).

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

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

3

4 12. California Code of Regulations, title 16, section 1770 states:

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

9
10 **CAUSE FOR DENIAL OF APPLICATION**

11 **(January 2, 2007 Criminal Conviction for Illegal Possession of a Hypodermic Needle**
12 **on January 28, 2006)**

13 13. Respondent's application for registration as a pharmacy technician is subject to denial
14 under section 480, subdivision (a)(1), and 4301, subdivision (l), of the Code in that she was
15 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
16 pharmacy technician. The circumstances are as follows:

17 14. On or about January 2, 2007, in a criminal proceeding entitled *People of the State of*
18 *California v. Jennifer Cristine Newton, aka Jennifer Cristine Wachta*, in the Superior Court of
19 California, County of Riverside, in Case Number RIM473702, Respondent was convicted on her
20 plea of guilty of violating Business and Professions Code section 4140 (possession of a
21 hypodermic needle/syringe), a misdemeanor. As a result of a plea agreement, a count for
22 violating Penal Code section 853.7 (failure to appear on a written promise), a misdemeanor, was
23 dismissed.

24 15. As a result of the conviction, the Court placed Respondent on probation for 3 years
25 and ordered her to serve one day in the Riverside County Jail, pay various fines and fees, and
26 submit person, automobile, residence, garage, storage areas, and personal or leased property to
27 search and seizure for the detection of hypodermic needles.

