

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

In the Matter of the Accusation Against:

ERIN KATHLEEN RODICK

Pharmacist License No. RPH 46916

Respondent.

Case No. 2873

OAH No. L2007010097

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on August 22, 2007.

It is so ORDERED on July 23, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


WILLIAM POWERS
Board President

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In the Matter of the Accusation Against:

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ERIN KATHLEEN RODICK

OAH No. L2007010097

Pharmacist License No. RPH 46916,

Respondents

PROPOSED DECISION

Sandra L. Hitt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter at Los Angeles, California on March 29, 2007.

Complainant was represented by William Taylor, Deputy Attorney General.

Respondent was represented by Gregory P. Matzen, Attorney at Law.

Evidence was received, and the matter argued on the hearing dates. The Record was held open until April 19, 2007, for Respondent to file a written objection to Complainant's request for costs, and for Complainant to respond. On March 30, 2007, James A. Willis, on behalf of Mr. Matzen, wrote a letter to ALJ Hitt, copied to Mr. Taylor, requesting a copy of the statement of costs from the Attorney General in this matter (Ex. 6). A copy of this document was forwarded to Mr. Willis on April 4, 2007. Both Complainant and Respondent submitted timely briefs on the issue of costs. Complainant's brief was marked as Exhibit 8 and Respondent's brief was marked as Exhibit K. The case was submitted for decision on April 19, 2007. The Administrative Law Judge hereby makes her factual findings, legal conclusions, and orders:

FACTUAL FINDINGS

1. Virginia Herold (Complainant) filed the Accusation in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On March 8, 1994, the Board issued Pharmacist License No. RPH 46916 to Respondent Erin Kathleen Rodick. That license is due to expire on October 31, 2007, unless renewed.

3. On November 3, 2005, Respondent pled nolo contendere and was convicted, in the Superior Court of California, for the County of Los Angeles, in Case NO. BA 276691, of one count of violating Penal Code section 487 (felony grand theft by embezzlement of property worth over \$400) and one count of violating Revenue and Tax Code section 19705, subdivision (a)(1) (failure to file income tax return), a felony. This convictions involved crimes of moral turpitude, as they involved dishonesty, and were substantially related to the qualifications, functions and duties of the licensed activity as more fully set forth in paragraph 5 below. Respondent further admitted special circumstances within the meaning of Penal Code section 12022.6, subdivision (a)(2), in that Respondent took property valued at over \$150,000. Imposition of sentence was suspended, and Respondent was placed on five years of formal probation.

4. As conditions of probation, Respondent was ordered to maintain training, school or employment, to pay a restitution fine of \$200, to make restitution to the Motion Picture and Television Fund in the amount of \$343,500, to pay the costs of probation services, and to perform 500 hours of community service. Respondent paid her fine. Respondent also liquidated her retirement fund, "cashed-in" some insurance policies and borrowed approximately \$200,000 from her father in order to make restitution to the Motion Picture and Television Fund prior to the end of 2005. Respondent has been performing her community service by serving the poor and homeless through the food kitchen run by Father Ron and Father Peter at the St. Lawrence of Brindisi Church located in the Watts district of Los Angeles. Respondent actually began working with Father Ron at the food kitchen in August of 2005, prior to being ordered to perform community service. Respondent is still on formal probation, but now she has only to submit a form and to "check-in" with an automated system. At some point she may be eligible to convert to summary probation.

5. The facts and circumstances underlying Respondent's convictions are:

(a) Between approximately January 1999 and October 2004, Respondent, while employed as a pharmacist in charge at the Motion Picture and Television Fund pharmacy, embezzled somewhere between \$176,000 and \$343,500 from her employer. Respondent embezzled this money because her family's financial situation was difficult, and she was angry with her employer. She felt that her employer was treating her and other employees badly, and she perceived that her complaints to her superiors were falling on deaf ears. The Motion Picture and Television Fund is a member organization; thus in stealing money from her employer, she was, in effect, stealing money from her pharmacy clients. Respondent embezzled the money by documenting false returns of drugs or other merchandise and taking the money from the cash register.

(b) Although Respondent pled nolo contendere to failure to file an income tax return, in fact, she and her husband had timely filed income tax returns for the years in question. However, according to Respondent, her husband did not know about the embezzled money, and the embezzled money was not reported on their tax returns.

6. Respondent is currently employed as a pharmacist by a pharmacy in East Los Angeles. She is not employed as a pharmacist in charge, and does not handle money in her present job. Respondent has not told her current employer about her conviction. Respondent's probation officers told her that she did not have to reveal her conviction unless she were asked about it. Respondent testified that she did not tell her current employer about her conviction because her employer might think that she was about to lose her license, and she preferred to wait until the outcome of these proceedings. This testimony was not entirely credible. Given that Respondent is still on formal probation for felony embezzlement, it is only logical that her employer would have more concerns than the possibility that Respondent might lose her license, and that Respondent was also concerned that potential employers might not hire her if she revealed her conviction.

7. Since her conviction, Respondent has kept up to date with the continuing education requirements for pharmacists. Respondent has been learning Spanish to better assist her clients in the East Los Angeles Pharmacy. Respondent also volunteers with the girl scouts, and lectures on health-related topics at area schools. Respondent has three young daughters aged seven, eight and ten. Father Ron and Father Peter testified on Respondent's behalf. Their testimony was credited and forms the basis for the following findings. In addition to helping to serve food to the poor and homeless, Respondent undertook the additional responsibility of buying food with money from her own pocket, and preparing and wrapping sandwiches to give to the poor. She sometimes takes her daughters with her to work with Father Ron and Father Peter, feeding the poor. Respondent's service to the poor is excellent; she treats everyone with dignity. Father Peter was previously unaware of Respondent's conviction. Father Ron was aware of Respondent's conviction and believes that Respondent and her family have suffered enough. Father Ron is certain that Respondent has learned from her mistakes and has redeemed herself. Respondent expressed remorse at the hearing.

8. Respondent is having a difficult time financially. She and her husband entered a debt management program in 2006, because they had too many bills with high interest rates. Additionally, Respondent's father expects Respondent to repay the loan he made to (albeit at an unspecified low interest rate and with an unspecified "grace period" before repayment obligations begin).

9. The Board's Costs of prosecution in this matter were \$11,124.75. Respondent did not object to the Board investigatory costs of \$893.75; however, respondent objected to the prosecution costs submitted by the Attorney General. The statement of costs and accompanying declaration submitted by Deputy Attorney General William Taylor demonstrated that Mr. Taylor was not assigned to the matter until March 2, 2007. Prior to that time (from approximately July 6, 2006, to March 6, 2007), another Deputy Attorney General was assigned to the matter. A change in attorneys less than a month before the hearing date would necessarily involve some duplication of effort in having the new attorney "get up to speed" on the file. Therefore, the following Deputy Attorney General fees are disallowed: \$197.50 on March 5, 2007 for investigation, \$118.50 on March 8, 2007 for Analysis and strategy, \$79.00 on March 19, 2007 for research, \$39.50 on March 21, 2007 for research, \$79.00 on March 21, 2007 for research, and \$118.50 on March 21, 2007 for research, for a total of \$632.00. Reasonable costs in this matter are \$10,492.75. However, as more fully set forth in the legal conclusions below, given

Respondent's financial situation, it would not be reasonable to require her to pay these costs at this time.

LEGAL CONCLUSIONS

1. First Cause For Discipline (Conviction of a Substantially Related Crime)

Business and Professions Code¹ section 490 provides that "A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including revocation. Section 4301, subdivision (l) provides that the Board shall take action against a licensee who is guilty of unprofessional conduct, including the conviction of a crime substantially related to the qualifications, functions and duties of the licensee. California Code of Regulations title 16, section 1770 provides that for the purpose of revocation of a pharmacist's license, a crime or act shall be considered substantially related to the qualifications functions, and duties of a licensee if, to a substantial degree, it evidences present or potential unfitness of a licensee to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Respondent's convictions involved dishonesty and were therefore substantially related to the qualifications, duties and functions of the licensed activity (Findings 3 and 5), as such Respondent is guilty of unprofessional conduct which evidences, to a substantial degree, unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety or welfare. Thus cause exists under sections 490, 4300 and 4301, subdivision (l), to discipline Respondent's license.

2. Second Cause For Discipline (Acts involving Moral Turpitude)

Section 4301, subdivision (f) provides that the Board shall take action against a licensee who is guilty of unprofessional conduct by the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise. Cause exists to discipline Respondent's license under Business and Professions code section 4300 and 4301 subdivision (f), because Respondent committed acts of moral turpitude involving dishonesty (Findings 3 and 5).

3. Rehabilitation

People have a strong incentive to obey the law while under the supervision of the criminal justice system; therefore, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (See, e.g. *In re Gossage* (2000) 23 Cal.4th 1080.) Respondent is still on formal probation (Findings 3 and 4), therefore, although

¹ Unless otherwise noted, all statutory references herein are to the Business and Professions Code.

Respondent presented considerable evidence of rehabilitation (Finding 7), very little weight may be attributed to that evidence. Due to the serious nature of Respondent's felony conviction, the fact that she is still on formal probation for that conviction, and the fact that Respondent was not entirely forthcoming at the hearing (Finding 6), more time is needed for Respondent to demonstrate rehabilitation.

4. Reimbursement of Costs

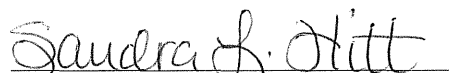
Under Business and Professions Code section 125.3, the ALJ has authority to order the licensee to repay the reasonable costs of the investigation and enforcement of the case. Although costs of \$10,492.75 for investigation and prosecution of this case are reasonable, it would not be reasonable to require Respondent to pay these costs at a time when her ability to earn a livelihood is greatly diminished. Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.4th 32, 45 (Zuckerman), the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. Also, in *Zuckerman*, the court held that the Board must consider the licensee's ability to make payment. Respondent has shown that she and her family are currently having financial difficulty; they are enrolled in a debt management program, and she owes her father over \$200,000 (Finding 7). Complainant did not present any evidence to rebut Respondent's evidence in this matter, although Complainant did call some of Respondent's evidence on this point into question. In any event, revocation of Respondent's license will indubitably have a severely adverse impact on Respondent's family income. The purpose of disciplining a professional or occupational license is to protect the public, not to punish the licensee. (See, e.g. *Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67. See, also, *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, and authorities cited therein.) An award of costs as against Respondent at this time would be unreasonable and unduly punitive.

WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

Pharmacist license No. RPH 46916, issued to Erin Kathleen Rodick, is hereby revoked.

Date: May 18, 2007


SANDRA L. HITT
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2873

11 ERIN KATHLEEN RODICK
a.k.a., ERIN KATHLEEN MALDNEY
12 a.k.a., ERIN MALONEY
a.k.a., ERIN RODIC
13 928 Wiladonda Drive
La Canada, CA 91011
14 Pharmacist License No. RPH 46916

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about March 8, 1994, the Board issued Pharmacist License No.
23 RPH 46916 to Erin Kathleen Rodick, also known as, Erin Kathleen Maldney, Erin Maloney, and
24 Erin Rodic (Respondent). The Pharmacist License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on October 31, 2007, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board, under the authority of the
28 following sections of the Business and Professions Code (Code).

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b) of the Code provides that the suspension,
3 expiration, or forfeiture by operation of law of a license does not deprive the Board of authority
4 or jurisdiction to institute or continue with disciplinary action against the license or to order
5 suspension or revocation of the license, during the period within which the license may be
6 renewed, restored, reissued or reinstated.

7 5. Section 4300 of the Code provides, in pertinent part, that every license
8 issued by the Board is subject to discipline, including suspension or revocation.

9 6. Section 4301 of the Code states:

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

14

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

18

19 “(l) The conviction of a crime substantially related to the qualifications, functions,
20 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
27 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty

1 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
2 meaning of this provision. The board may take action when the time for appeal has elapsed, or
3 the judgment of conviction has been affirmed on appeal or when an order granting probation is
4 made suspending the imposition of sentence, irrespective of a subsequent order under Section
5 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
6 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
7 or indictment.”

8 7. Section 490 of the Code provides, in pertinent part, that the Board may
9 suspend or revoke a license when it finds that the licensee has been convicted of a crime, if the
10 crime is substantially related to the qualifications, functions, or duties of that license.

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

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

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

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Conviction of a Substantially Related Crime)

24 10. Respondent is subject to disciplinary action under sections 4300, 4301,
25 subdivision (l), and 490 of the Code, in conjunction with California Code of Regulations, title
26 16, section 1770, in that Respondent was convicted of a crime substantially related to the
27 qualifications, functions or duties of a pharmacist, as follows:

28 ///

1 A. On or about November 3, 2005, Respondent was convicted by the Court
2 on a plea of nolo contendere on one count of violating Penal Code section 487, subdivision (a), a
3 felony (grand theft by embezzlement: property over \$400) and one count of Revenue and Tax
4 Code section 19705, subdivision (a)(1), a felony (failure to file income tax return), in the
5 Superior Court of California, County of Los Angeles, Central Judicial District, Case No.
6 BA276691, entitled *The People of the State of California v. Erin Kathleen Rodick*. Respondent
7 further admitted the special allegation that Respondent took property of a value exceeding
8 \$150,000, within the meaning of Penal Code section 12022.6, subdivision (a)(2).

9 B. The circumstances surrounding the conviction are that on or between
10 January 14, 1999 and September 30, 2004, Respondent, while an agent, servant, and employee of
11 Motion Picture and Television Fund, unlawfully took from Motion Picture and Television Fund
12 money and property of a value exceeding \$150,000.00.

13 C. Furthermore, on and between January 1, 2003 and April 15, 2003,
14 Respondent willfully and unlawfully failed to file an income tax return with the State of
15 California, Franchise Tax Board, in order to evade taxes.

16 D. Respondent was sentenced to be imprisoned in the State Prison for a total
17 of 5 years and 8 months.

18 SECOND CAUSE FOR DISCIPLINE

19 (Acts Involving Moral Turpitude)

20 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
21 subdivision (f) of the Code, on the grounds of unprofessional conduct, in that Respondent
22 committed acts involving moral turpitude, as more fully set forth above in paragraph 10.

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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 Pharmacist License No. RPH 46916, issued to Erin Kathleen Rodick, also known as, Erin Kathleen Maldney, Erin Maloney, and Erin Rodic;

2. Ordering Erin Kathleen Rodick to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/28/06



VIRGINIA HEROLD
Interim Executive Officer
Board of Pharmacy
State of California
Complainant