

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

In the Matter of the Accusation Against:

MARY JANE GUY,

Pharmacy Technician Registration
No. TCH 44416

Respondent.

Case No. 3058

OAH No. L2007050746

DECISION

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 the above-entitled matter.

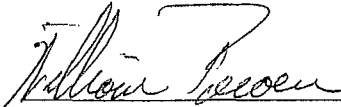
This Decision shall become effective October 24, 2007.

IT IS SO ORDERED.

Date: September 24, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


WILLIAM POWERS
Board President

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PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 7, 2007, in San Diego, California.

Susan Fitzgerald, Deputy Attorney General, represented complainant Virginia Herold, the Executive Officer of the California State Board of Pharmacy, Department of Consumer Affairs, State of California.

Respondent Mary Jane Guy, also known as Mary Jane Gaydos, represented herself and was present throughout the administrative proceeding.

On August 7, 2007, the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 27, 2007, complainant Virginia Herold, the Executive Officer of the California State Board of Pharmacy (the Board), Department of Consumer Affairs, State of California, signed the accusation in her official capacity. The accusation alleged that respondent Mary Jane Guy (Guy or respondent) engaged in unprofessional conduct in that she illegally possessed and used a controlled substance (methamphetamine) on March 21, 2006, after which she was convicted of violating Penal Code section 647 (being under the influence of drugs in public), and, in aggravation, that Guy was convicted of violating

Vehicle Code section 23152 (driving with an excessive blood alcohol level) on December 31, 2001. The accusation sought the suspension or revocation of Guy's pharmacy technician registration and an order directing Guy to pay the Board's costs of investigation and enforcement. The accusation and other required documents were served on Guy, who timely filed a notice of defense. The disciplinary matter was set for an administrative hearing.

On August 7, 2007, the record in the administrative hearing was opened. Jurisdictional documents were presented. Sworn testimony and documentary evidence was received, closing arguments were given, the record was closed, and the matter was submitted.

Registration Information and History

2. The Board issues a registration to pharmacy technicians based on minimal education and/or training requirements. No examination is required for the issuance of a pharmacy technician registration. Pharmacy technicians are not independent practitioners, and they must work under the supervision of a registered pharmacist.

3. On May 15, 2003, the Board issued to Mary Jane Guy Pharmacy Technician Registration No. TCH 44416, authorizing her to act as a pharmacy technician in California. Guy's pharmacy technician's registration is renewed through October 31, 2008, unless suspended or revoked.

There is no history of any previous administrative discipline having been against Guy's pharmacy technician's registration.

Guy's Background, Training, and Experience

4. Guy was born on October 12, 1981, in Glendale, California. She grew up in Southern California, graduating from Alta Vista High School in 1999.

Guy joined the Job Corps after graduating from high school and spent about 18 months in a nurse-training program. In March 2001, Guy married a man on active duty in the United States Navy. Guy and her husband separated after approximately one year of marriage, and while an action to dissolve their marriage was filed, Guy's husband left the Navy and his current whereabouts are unknown. The dissolution action is pending. There are no children from the marriage.

Guy worked as a retail sales clerk at a Sav-On Drug store in 2001. Through this employment she became interested in becoming a pharmacy technician. Pursuing this interest, Guy engaged in a course of study at the Academy of Professional Careers in La Mesa. Following the completion of her vocational training, Guy became a registered pharmacy technician.

5. Guy worked as a registered pharmacy technician at Sav-On Drugs in El Cajon and Oceanside, at Von's Drugs in Scripps Ranch, and at Rx Solutions in San Diego County.

Guy is currently employed as a registered pharmacy technician at Rancho Park Pharmacy in Encinitas, where she has been employed since November 2006. Eric Tran, Pharm.D., is her employer and supervisor.

6. Guy began experimenting with alcohol and drugs when she was a teenager. Her use of alcohol and drugs continued into her marriage. While Guy does not believe she became alcoholic, she was arrested for driving under the influence at the International Border on December 1, 2001, an arrest which resulted in the conviction described hereafter.

After separating from her husband and moving to Oceanside to live with her aunt and uncle, Guy used methamphetamine.¹ Sometime in 2003 or 2004, Guy came to believe she had a problem with her drug use and she voluntarily began attending Narcotics Anonymous meetings. Guy remained drug and alcohol free for approximately eight or nine months, then drank a beer which led to her use of methamphetamine again.

Guy's use of methamphetamine increased and she ultimately used it at least every other weekend before she hit bottom. Her tolerance to methamphetamine increased and she gradually had to use more to become high. Guy was unable to stop her increasing use, she was frightened and embarrassed, and she hid her substance abuse from her aunt, uncle and other family members.

Guy was arrested in El Cajon on March 21, 2006, as a result of being under the influence of methamphetamine. The arrest and disposition is described in Factual Finding 7.

Guy's Arrests and Convictions

7. On March 21, 2006, at approximately 2:00 a.m., Guy and a male friend, B.W., were sitting in Guy's car in the Travel Time Motel parking lot on El Cajon Boulevard in San Diego. Guy and B.W. were approached by San Diego Police Department officers who had permission from the motel's owner to contact and detain persons on the motel premises to determine whether such persons were using narcotics or were engaged in prostitution.² Officer Garlow contacted Guy and observed her exhibiting signs and symptoms consistent with being under the influence of a controlled substance, which included rapid speech, dilated pupils, and a rapid pulse. Officer Garlow asked Guy if she had used drugs, and Guy admitted that earlier that evening she gave B.W. \$50 to purchase methamphetamine and that she and B.W. had smoked it.

¹ Notice is taken that methamphetamine is a controlled substance under Health and Safety Code section 11054 and is a dangerous drug under Health and Safety Code section 4022.

² There is no evidence or suggestion that Guy was engaged in prostitution. She had known B.W. for a long time and they spent the evening partying and playing pool.

Guy was arrested and transported to police department headquarters where she was booked. She provided a urine sample. Guy was then taken to the Las Colinas jail where she remained incarcerated for several hours before she was released.

As a result of the events giving rise to her arrest, Guy pled guilty to violating Penal Code section 647, subdivision (f) (being under the influence of drugs), a misdemeanor. The offense did not involve moral turpitude per se or as a factual matter. The district attorney and the court determined that Guy was eligible to participate in an 18-month deferred entry of judgment program under Penal Code section 1000 et seq., the judicially supervised state drug and alcohol education program.

On January 30, 2007, Guy successfully completed the Penal Code section 1000 drug education class provided through the McAlister Institute Treatment & Education program. Art Fayer, the program manager, wrote a letter stating:

“Ms. Guy was an exemplary participant in the program, testing clean of all drugs at all random drug tests. She demonstrated excellent drug free coping skills as the four month program progressed and should be capable of continuing to be a positive and productive member of the community.”

Guy will become eligible to have all charges dismissed June 2008 when she completes the Penal Code section 1000 diversion program.

8. On December 31, 2001, Guy pled guilty to and was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with an excessive blood alcohol level) in the Superior Court of California, County of San Diego, South County Division, in Case No. S 164764 entitled *People of the State of California v. Mary Jane Gaydos*.

Imposition of sentence was suspended, and Guy was placed on three years summary probation. Terms and conditions of her probation required Guy to pay fines and fees of approximately \$1,500, to provide three days service in a public works program (with credit given for one day previously served in custody), to attend and complete a first conviction drinking driver program, to attend one AA or NA meeting per week for six months, to not drive with a measurable amount of alcohol in her system, to submit to chemical testing upon request, and to violate no laws (other than minor traffic offenses).

Guy completed probation.

Evidence in Explanation, Extenuation, Mitigation and Rehabilitation

9. Guy presented as a hardworking, contrite, and very embarrassed young woman who truthfully provided a personal history that involved family difficulties (her stepmother would not permit her to live in the family home after her stepmother married her father), a failed marriage, and a substance abuse problem that currently appears in remission. Guy's testimony concerning her employment history and her efforts to deal with her substance abuse problems was corroborated by documentary evidence including a letter from her

immediate supervisor, her NA sponsor, the program manager of the Penal Code section 1000 educational program, and a certificate of completion related to the Penal Code section 1000 educational program.

10. Guy testified that she last used methamphetamine on March 21, 2006, which was the date she hit bottom. Guy testified, "I screwed up my life really, really bad."

Following her release from jail, Guy began attending Narcotics Anonymous meetings. She currently attends four meetings a week. Her NA home group meets in Oceanside on Wednesday nights. Guy has had the same NA sponsor, Tina G.,³ for more than a year, and Guy maintains close contact with her sponsor. Guy and her sponsor are working the 4th Step of the recovery program. Guy has several NA commitments, including service as the group services representative for her home group.

11. Guy's compliance with the Penal Code section 1000 diversion program was supplemented and explained by Fayer's July 31, 2007 letter, a portion of which is set forth in Factual Finding 7.

12. In a letter dated August 7, 2007, Tina G. stated that Guy worked diligently in the last year to make positive changes in her life, that Guy regularly attends AA and NA meetings, that Guy follows Tina G.'s direction and the feedback from her support groups, that Guy demonstrates a sincere desire to remain clean, that Guy takes great pride in her work and in helping others, that Guy demonstrates responsibility and accountability, that Guy shows compassion and understanding, and that sobriety is Guy's number one priority.

This letter supplemented and explained Guy's testimony concerning her recovery.

13. Guy loves working as a pharmacy technician. She has never been terminated from any employment for diverting drugs or for being under the influence of drugs. Guy recognized the Board's concern in permitting a person who has abused controlled substances to continue working as a registered pharmacy technician.

14. Eric Tran (Tran), Pharm D., the manager and owner of Rancho Park Pharmacy, wrote a letter in support. Tran was aware of Guy's situation and the Board's pending disciplinary action. Tran represented that Guy worked under his direct supervision and that she understood the needs of the patients and the pharmacy's need to strictly comply with the applicable statutes and regulations. He described Guy as being a very competent employee who was critical to his pharmacy's operation. Tran stated Guy was someone he could depend on to show up to work and give her best effort every day. According to Tran, "She puts the needs of the pharmacy and the patients before herself and at many times offers to take the extra steps to assist our patients." Tran noted that Guy was young when she made

³ Tina G. disclosed her full name, email address, and occupation in her letter of reference. Out of respect to the NA 12-step program and its tradition of anonymity, Tina G.'s full name is not being used in this proposed decision.

her mistakes and had learned from them. He asked the Board to give Guy the opportunity to prove and redeem herself.

Disciplinary Guidelines

15. The Board enacted comprehensive regulatory guidelines⁴ which are to be followed in all disciplinary actions. The Board recognizes that individual cases may necessitate a departure from these guidelines; in such cases, mitigating circumstances should be detailed.

With regard to a pharmacy technician, the guidelines state:

“The board files cases against pharmacy technicians where the violation(s) involve significant misconduct on the part of the licensee. The board believes that revocation is the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to the following violation(s) of law(s) involving:

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol . . . ”

16. Guy’s misconduct involved a Category II violation. The guidelines provide:

“A minimum three-year probation period has been established by the board as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the board as appropriate where self-administration or diversion of controlled substances is involved. Terms and conditions are imposed to provide consumer protection and to allow the probationer to demonstrate rehabilitation . . . The board prefers that any stayed order be for revocation rather than for some period of suspension.”

The Board believes that certification before resuming work is always warranted in cases where a pharmacy technician registration is disciplined but not revoked.

The Appropriate Measure of Discipline

17. Guy’s unprofessional conduct involved the use of methamphetamine on weekends away from work, which posed a slight but increasing risk of harm to the public as her substance abuse progressed; Guy did not divert drugs from her employment or from any patient; Guy has no prior disciplinary record; Guy’s March 2006 arrest resulted in her “hitting bottom,” being placed in a court-monitored diversion program, and participating in a

⁴ California Code of Regulations, title 16, section 1760.

12-step program; it is likely, because of Guy's sincere rehabilitative efforts, that Guy will suffer a criminal conviction and it is likely that all criminal charges will be dismissed upon the completion of her 18-month Penal Code 1000 diversion program.

Guy's testimony concerning her rehabilitation and recovery after March 21, 2006, was very impressive. Guy remained gainfully employed and her vocational effort and skills are valued by her employer; Guy sought and received appropriate counseling concerning her substance abuse; Guy attends several 12-step meetings each week and engages in an honest recovery program, not one designed to curry favor; Guy's support group includes her family; and, there is no evidence that Guy has possessed or used drugs since March 21, 2006. Guy's testimony concerning her recovery and her rehabilitation was credible, and it was supported by verification as recommended in the disciplinary guidelines.

The primary purpose of this disciplinary proceeding is to protect the public. It is concluded, as recommended by complainant, that the imposition of a revocation, stayed, with five years probation will adequately protect the public and to allow Guy to demonstrate rehabilitation.

Costs of Investigation and Enforcement

18. A certification of costs/declaration was signed by the deputy attorney general who prosecuted the action. It established that the Attorney General's Office billed 7.5 hours of attorney services at the rate of \$158 per hour. The time spent and the hourly rate was quite reasonable. As usual, the deputy attorney general who prosecuted the matter was well prepared and very professional. Under all the circumstances, it is determined that the Board is entitled to an order directing Guy to pay \$1,185 in costs of enforcement.

LEGAL CONCLUSIONS

Registration as a Pharmacy Technician

1. Business and Professions code section 4038 defines "pharmacy technician" as "an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties as specified in section 4115."

2. Business and Professions Code section 4115 sets forth various tasks which a pharmacy technician may perform. For example, subdivision (a) provides "a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." The duties a pharmacy technician may perform are further subject to regulation.⁵

⁵ California Code of Regulations, title 16, section 1793.2 provides:

"Nondiscretionary tasks' as used in Business and Professions Code section 4115, include:

3. Business and Professions Code section 4115, subdivision (e) provides:

“No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.”

4. When read properly, the rules and regulations related to registered pharmacy technicians do not allow a pharmacy technician to perform any discretionary act or any act requiring the exercise of professional judgment by a registered pharmacist. (*Californians for Safe Prescriptions v. California State Board of Pharmacy* (1993) 19 Cal.App.4th 1136, 1155-1156.)

5. Business and Professions Code section 4202 provides in part:

“(d) The board may suspend or revoke a registration issued pursuant to this section on any ground specified in Section 4301.”

Pertinent Disciplinary Statutes and Regulations

6. Business and Professions Code section 4301 provides in part:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to,⁶ any of the following:

. . .

(f) 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, and whether the act is a felony or misdemeanor or not.

. . .

-
- (a) removing the drug or drugs from stock;
 - (b) counting, pouring, or mixing pharmaceuticals;
 - (c) placing the product into a container;
 - (d) affixing the label or labels to the container;
 - (e) packaging and repackaging.”

⁶ The phrase “including but not limited to” as set forth in Business and Professions Code section 4301 (previously Bus. & Prof. Code § 4305.5) was considered in *Smith v. State Board of Pharmacy* (1995) 37 Cal.App.4th 229, 246, where the appellate court reasoned:

“The gross negligence designation is simply one of several items that are specified as included for purposes of determining what is unprofessional conduct. The list of items expressly ‘is not limited to’ those specified.”

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

7. Business and Professions Code section 4060 provides in part:

“No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . . or furnished pursuant to a drug order issued by a certified nurse-midwife . . . a nurse practitioner . . . a physician assistant . . . a naturopathic doctor . . . or a pharmacist . . .”

8. Health and Safety Code section 11550, subdivision (a) provides in part:

“No person shall use, or be under the influence of any controlled substance . . . except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.”

9. Health and Safety Code section 11170 provides:

“No person shall prescribe, administer, or furnish a controlled substance for himself.”

Moral Turpitude

10. Conviction of some crimes establishes moral turpitude per se. These crimes include offenses involving an intent to defraud as well as extremely repugnant crimes such as murder. Convictions for drunk driving, however, do not necessarily involve moral turpitude. (*In re Kelley* (1990) 52 Cal. 3d 487, 494.) Nor does a crime involving the simple possession of a controlled substance, as opposed to possession of such a substance for sale, necessarily involve moral turpitude. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1023.)

11. Where a conviction of a crime does not establish moral turpitude per se, the circumstances surrounding the conviction may be reviewed to determine if moral turpitude was involved. (*In re Kelley* (1990) 52 Cal. 3d 487, 494.)

The particular factual circumstances surrounding Guy’s possession and use of methamphetamine did not establish moral turpitude, dishonesty, fraud, deceit, or corruption within the meaning of Business and Professions Code section 4301, subdivision (f). This conclusion is based on Factual Findings 6 and 7 and on Legal Conclusions 1-11.

Substantial Relationship

12. A professional license may be suspended or revoked only if the conduct upon which the discipline is based relates to the practice of the particular profession and thereby demonstrates a present unfitness to practice such profession. Whether this requirement tying the conduct to the fitness or competence to practice a profession is termed a “nexus” or a

“relationship,” the inherent meaning is the same. There must be a logical connection between the licensees’ conduct to their present fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. Despite the omission of an explicit requirement that there be a “substantial relationship” in a disciplinary statute, courts have concluded that the Legislature intend such a requirement. (*Clare v. California State Board of Accountancy* (1992) 10 Cal.App.4th 294, 301-303.)

13. The substantial relationship between holding a pharmacy technician registration and the unlawful possession or use of controlled substances or dangerous drugs is obvious – persons who illegally possess or use such substances should not be permitted to hold employment that provides them with access to controlled substances because of the high risk of diversion and abuse, and the harm caused to the public as a consequence thereof. This relationship is amply demonstrated in the Board’s guidelines.

Cause Exists to Impose Administrative Discipline

14. Cause does not exist under Business and Professions Code section 4301, subdivision (f) to revoke Guy’s registration as a pharmacy technician. Guy’s March 21, 2006, arrest and the subsequent conviction was not a felony, it did not involve moral turpitude as a matter of law, and the particular conduct underlying the conviction did not involve moral turpitude, dishonesty, fraud, deceit, or corruption as a matter of fact.

This conclusion is based on Factual Findings 6 and 7 and on Legal Conclusions 1-6, 10 and 11.

15. Cause exists under Business and Professions Code section 4301, subdivision (j) to revoke Guy’s registration a pharmacy technician. Guy’s March 21, 2006, arrest involved the unlawful possession and use of methamphetamine, a controlled substance, in violation of several California statutes regulating controlled substances and dangerous drugs including Business and Professions Code section 4060 and Health and Safety Code sections 11150 and 11170. Sufficient rehabilitation was established to issue an order revoking Guy’s registration, but staying the order of revocation, and placing Guy on five years probation on appropriate terms and conditions of probation designed to protect the public and to permit Guy to establish her rehabilitation.

This conclusion is based on all Factual Findings and on Legal Conclusions 1-12.

Recovery of Costs of Investigation and Prosecution

16. Business and Professions Code section 125.3 provides in part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

...

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . .”

17. Cause exists under Business and Professions Code section 125.3 to direct Guy to reimburse the Board its reasonable costs of investigation and enforcement in the amount of \$1,185.

This conclusion is based on Factual Finding 18 and on Legal Conclusions 14 and 15.

ORDER

Technician registration number TCH 44416 issued to respondent Mary Jane Guy is revoked; however, the order of revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. *Certification Prior to Resuming Work*

Respondent shall be suspended from working as a pharmacy technician until he or she is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the board.

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

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

2. *Obey All Laws*

Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

3. *Reporting to the Board*

Respondent shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

4. *Interview with the Board*

Upon receipt of reasonable notice, respondent shall appear in person for interviews with the board upon request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.

5. *Cooperation with Board Staff*

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

6. *Notice to Employers*

Respondent shall notify all present and prospective employers of the decision in case number 3058 and the terms, conditions and restrictions imposed on respondent by the decision.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause her employer to report to the board in writing acknowledging the employer has read the decision in case number 3058.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the decision in case number 3058 in advance of respondent commencing work at each pharmacy.

“Employment” within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether respondent is considered an employee or independent contractor.

7. *Reimbursement of Board Costs*

Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$1,185. Respondent shall make monthly payments of \$75 or more per month until the costs have been paid in full.

If respondent fails to pay the costs as specified by the board and on the date(s) determined by the board, the board shall, without affording respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board its costs of investigation and prosecution.

8. *Probation Monitoring Costs*

Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

9. *Status of License*

Respondent shall, at all times while on probation, maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.

If respondent's technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. *Notification of Employment/Mailing Address Change*

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

11. *Tolling of Probation*

It is a violation of probation for respondent to work less than thirty (30) hours per month as a pharmacy technician/exemptee. Should respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, respondent must notify the board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's

probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

“Cessation of practice” means any period of time exceeding 30 days in which respondent is not engaged in the practice of a pharmacy technician as defined in the Business and Professions Code.

12. *Attend Substance Abuse Recovery Relapse Prevention and Support Groups*

Respondent shall continue regular attendance at a board-approved recognized and established substance abuse recovery support group in California, (e.g., Alcoholic Anonymous, Narcotics Anonymous, Cocaine Anonymous, etc.). Respondent must attend at least one group meeting per week. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation.

13. *Random Drug Screening*

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the board. At all times respondent shall fully cooperate with the board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

14. *Work Site Monitor*

Within 10 days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. The work site monitor shall report to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within 10 days of commencing new employment.

15. *Notification of Departure*

If respondent leaves the geographic area for a period greater than 24 hours, respondent shall notify the board verbally and in writing of the dates of departure and return, prior to leaving.

16. *Abstain from Drugs and Alcohol Use*

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board, respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of respondent. Additionally, respondent shall cause the prescribing practitioner to notify the board in writing, indicating their awareness of the chemical dependency. Additionally, respondent shall cause the prescribing physician to notify the board in writing, indicating their awareness of the chemical dependency.

17. *Tolling of Suspension*

If respondent leaves California to reside or practice outside this state, or for any period exceeding 10 days (including vacation), respondent must notify the board in writing of the dates of departure and return. Periods of residency or practice outside the state or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period.

Respondent shall not act as a pharmacy technician upon returning to this state until notified by the board that the period of suspension has been completed.

18. *Violation of Probation*

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

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

19. *License Surrender While on Probation*

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender

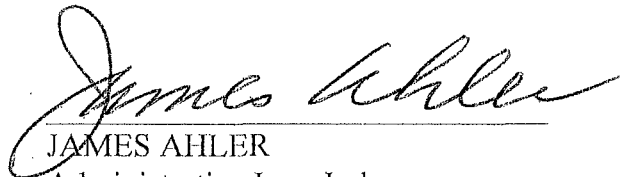
of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

20. *Completion of Probation*

Upon successful completion of probation, respondent's technician registration will be fully restored.

DATED: August 14, 2007.



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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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 Accusation Against:
12
13 MARY JANE GUY a.k.a. MARY JANE
GAYDOS
14 P. O. Box 1633
Oceanside, CA 92051
15 Original Pharmacy Technician Registration No.
TCH 44416
16
17 Respondent.

Case No. 3058

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about May 15, 2003, the Board of Pharmacy issued Original Pharmacy
23 Technician Registration Number TCH 44416 to Mary Jane Guy, a.k.a. Mary Gaydos
24 (Respondent). The Original Pharmacy Technician registration was in full force and effect at all
25 times relevant to the charges brought herein and will expire on October 31, 2008, unless
26 renewed.

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28 ///

JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws of the Business and Professions
4 Code:

5 A. Section 4301 of the Code states:

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

10 "....

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

14 "....

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

17 "...."

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

22 4. This Accusation also refers to Health & Safety Code §11550(a) that provides that
23 no person shall use or be under the influence of a controlled substance except when administered
24 by or under the direction of a person licensed by the state to dispense, prescribe, or administer
25 controlled substances.

DRUGS

26
27 5. Methamphetamine is a controlled substance under Health & Safety Code §11054
28 and a dangerous drug pursuant to Code section 4022.

1 CHARGES AND ALLEGATIONS

2 FIRST CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct: Violation of Statute re Controlled Substance)

4 6. Respondent is subject to disciplinary action under Code §4301(j) in conjunction
5 with Health & Safety Code §11550(a) (illegal use of a controlled substance) as more particularly
6 alleged below:

7 A. On or about March 21, 2006, Respondent was sitting in car in the parking lot of a
8 motel on El Cajon Boulevard, San Diego when she and the other occupant of the
9 vehicle were approached by a San Diego Police Department officer.

10 B. The owner of the motel had previously granted permission to the San Diego police
11 to contact any person located on the motel's property to make sure no narcotic or
12 prostitution activity was taking place.

13 C. Respondent was observed by the police officer to exhibit signs and symptoms of
14 being under the influence of a controlled substance. Subsequently, she admitted
15 having smoked methamphetamine earlier that evening, after giving a friend \$50 to
16 buy it.

17 SECOND CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct: Act Involving Moral Turpitude, Dishonesty,
19 Fraud, Deceit, or Corruption)

20 7 Respondent is subject to disciplinary action under section 4301(f) for acts
21 involving moral turpitude, dishonesty and corruption, as more particularly alleged in paragraph 6
22 above and incorporated herein by reference.

23 DISCIPLINE CONSIDERATIONS

24 8. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges that:

26 A. On or about December 31, 2001, in a prior criminal proceeding entitled *People v.*
27 *Mary Jane Gaydos* in San Diego - South County Division Superior Court, Case
28 Number S164764, Respondent was convicted for violating Vehicle Code section

1 23152(b) (DUI), a misdemeanor, and was ordered to serve 3 years summary
2 probation; to pay fines and restitution; to serve 3 days of public service work
3 program with credit for 1 day served; to complete the First Conviction Program;
4 and to have a 90-day restriction on her driver's license. The record of the criminal
5 proceeding is incorporated as if fully set forth.

6 B. As a result of the incident on March 21, 2006, Respondent was arrested and
7 charged with violating Health & Safety Code §11550(a). She pled to violating
8 Penal Code §647(f) (being under the influence in public) and judgment was
9 deferred for 18 months.

10 PRAYER

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

13 1. Revoking or suspending Original Pharmacy Technician Registration Number
14 TCH 44416, issued to Mary Jane Guy, a.k.a. Mary Gaydos;

15 2. Ordering Mary Jane Guy to pay the Board of Pharmacy the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3;

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

19 DATED: 4/27/07

20 

21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant
27
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