

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

In the Matter of the Accusation Against:

RHONDA LEE COATS a.k.a.

RHONDA LEE NELSON

P.O. Box 1838

Mariposa, CA 93728

Pharmacy Technician License No. TCH 51846

Respondent.

Case No. 3085

OAH No. 2010041140

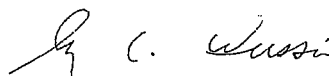
DECISION

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 February 17, 2011.

It is so ORDERED January 18, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

BEFORE THE
CALIFORNIA STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

In the Matter of the Accusation against:

RHONDA LEE COATS a.k.a.
RHONDA LEE NELSON
Mariposa, California

Pharmacy Technician Registration
No. TCH 51846,

Respondent.

Case No. 3085

OAH No. 2010041140

PROPOSED DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 3, 2010, in Fresno, California.

Arthur D. Taggart, Supervising Deputy Attorney General, represented the complainant, Virginia Herold, Executive Officer of the Board of Pharmacy.

The respondent, Rhonda Lee Coats, appeared in propria persona.

The record was closed on September 3, 2010.

SUMMARY

Respondent is licensed as a pharmacy technician.

In 2004, respondent was convicted of willfully inflicting pain or mental suffering on her 16-year-old son. Complainant alleges the conviction as a ground for disciplining respondent's license. Complainant also contends that the conduct that gave rise to the conviction constituted an act of moral turpitude or corruption that is a further ground for disciplining respondent's license.

In 2006, respondent was in possession of methamphetamine and marijuana and was under the influence of methamphetamine. Complainant alleges that respondent's license is subject to discipline because of her violation of statutes regulating controlled substances or dangerous drugs. Complainant also contends that respondent's possession of

methamphetamine and marijuana constituted an act of moral turpitude or corruption that is a further ground for disciplining her license.

Also, complainant contends that Business and Professions Code section 4301, subdivision (h), is a statute regulating controlled substances, that respondent violated that statute, and that the violation is a ground for imposing discipline.

The ultimate issues are: Should respondent's license be disciplined? If it should be disciplined, what discipline is appropriate?

Complainant also seeks cost recovery, and there are issues regarding the prayer for cost recovery.

In this decision, it is found that grounds exist to discipline respondent's license but that the evidence justifies issuance of a probationary license. Further, it is found that respondent is not financially able to reimburse the board for its costs.

FACTUAL FINDINGS

BACKGROUND

1. On December 17, 2003, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 51846 to the respondent, Rhonda Lee Coats.

2. Respondent has never worked as a pharmacy technician. She, however, has paid the fees to maintain her license. Pharmacy technicians are not in great demand in Mariposa, which is where respondent lives; there are only two pharmacies there. Respondent said she has not sought work in neighboring towns because she has not had reliable transportation. She testified that she wants to work as a pharmacy technician and plans to apply for a position.

CONVICTION

3. On November 9, 2004, in the Superior Court of California for the County of Mariposa, respondent was convicted of violating Penal Code section 273a, subdivision (b), willfully inflicting unjustified physical pain or mental suffering on a child, a misdemeanor. The conviction was on a plea of no contest. The court deferred entry of judgment and continued the matter to May of 2006. The court directed respondent to complete a parenting class.

4. By an order dated May 11, 2006, the court placed respondent on formal probation for four years. As a condition of probation, the court required respondent to complete a parenting class. The court imposed other standard conditions of probation. The

court noted that respondent's counsel represented that respondent already had completed the parenting class. In the present proceeding, respondent introduced a certificate in evidence that shows that she completed 52 weeks of classes concerning child endangerment.¹ The classes were provided by the Mariposa County Department of Behavioral Health. Respondent's probation terminated in May of 2010.

5. The incident that gave rise to the conviction occurred on July 12, 2004. Respondent and her 16-year-old son argued about his spending time on a Playstation game. Respondent told him to turn it off and do something constructive. During the argument, the boy said, "Hit me. I dare you." Respondent was upset that her son was being disrespectful. She hit him under his right eye with a closed fist. The boy left to stay with his aunt who lived in the same apartment complex. A police officer arrived and observed that the boy had swelling and an abrasion under his eye. That night, the boy returned to respondent's apartment.

6. The crime of which respondent was convicted is one that is substantially related to the qualifications, functions, and duties of a pharmacy technician.

7. The crime of which respondent was convicted is one that involves moral turpitude.

POSSESSION AND USE OF CONTROLLED SUBSTANCES

8. Respondent began using methamphetamine when she was approximately 20 years old, which would have been in 1986.

9. On May 8, 2006, a Mariposa County Deputy Sheriff found methamphetamine and marijuana in respondent's backpack. Respondent admitted to the deputy that she had used methamphetamine that morning. Respondent told the deputy that she used methamphetamine approximately five times a week. She said she had used methamphetamine for a long time but had had periods of not using.

10. The district attorney charged respondent with a violation of Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, a misdemeanor, and with a violation of Health and Safety Code section 11550, subdivision (a), being under the influence of a controlled substance, a misdemeanor. On May 11, 2006, the court placed respondent in a drug diversion program. In satisfaction of the terms of that program, respondent completed a drug treatment program. And she attended Narcotics Anonymous (NA) and Alcoholic Anonymous (AA) meetings three times a week for one year.

¹ The certificate respondent submitted is dated March 3, 2008, but as noted above, according to the court's records, on May 11, 2006, respondent's counsel represented that respondent already had completed the classes.

11. In February and March of 2009, respondent relapsed and used methamphetamine for two months. In connection with the drug diversion program, respondent was being drug tested, and she tested positive. Respondent testified that the relapse occurred when she learned that her mother had cancer. Her mother had known for some time that she had cancer but had not told respondent. Respondent said that, when she learned that her mother had kept the matter a secret, she was devastated. On April 1, 2009, the court placed respondent under house arrest for 30 days and required her to complete a relapse prevention program. On June 24, 2009, respondent completed the relapse prevention program. And she attended NA and AA meetings three times a week for six months.

REHABILITATION

12. As noted above, the incident that gave rise to respondent's conviction occurred on July 12, 2004, which was more than six years ago. Respondent's probation, however, did not end until May 11, 2010, which was less than six months ago. There is no evidence that respondent has ever abused her son on any other occasion and no evidence that she has ever abused any other child. Sometime before May of 2006, respondent complied with the court's direction and completed a 52-week course on parenting.

13. Respondent completed a drug dependency program and attended NA and AA meetings for one year. After a two-month relapse in February and March of 2009, respondent completed a relapse prevention program and attended NA and AA meetings for six months. Respondent declared that she has not used drugs within the past 18 months, and no evidence was presented that she has.

14. Respondent's husband testified that he has never used illicit drugs and that neither he nor respondent has ever abused alcohol. Mr. Coats testified that respondent is a good person.

RECOMMENDATIONS

15. Respondent has worked at the Comfort Inn in Mariposa since 2004. Gopal Das, the general manager of the Comfort Inn wrote a letter dated August 14, 2010. Mr. Das wrote that respondent is very reliable. He said respondent always is punctual, and her work ethic is laudable. Five days a week, she does all of the laundry for approximately 110 guests. Mr. Das said respondent is friendly, cooperative, honest, and sincere.

16. Martha Pierce and respondent are friends. Ms. Pierce knows respondent well. Ms. Pierce wrote a letter in which she referred to respondent's relapse at the time respondent learned that her mother had cancer. Ms. Pierce wrote that, after that, respondent proved that she was strong and determined not to use drugs; when respondent's mother died, respondent did not relapse.

COST RECOVERY

17. Complainant submitted a cost certification showing costs for the Attorney General's services in the amount of \$1,209. Attached to the certification is a description of the tasks performed and the time spent on the various tasks. The certification satisfies California Code of Regulations, title 1, section 1042, subdivision (b)(3). It is found that those costs were incurred and are reasonable.

RESPONDENT'S ABILITY TO PAY COSTS

18. Respondent has two children and three stepchildren. She and her husband have reared those five children. One of respondent's children is still at home. Also, one of respondent's grandchildren lives with her and her husband.

19. Until April of this year, respondent's husband worked and earned "good pay." But he became disabled with severe arthritis in his back and cannot work. Respondent testified that she now is the sole support of the household.

20. As noted above, since 2004, respondent has done the laundry for a Comfort Inn in Mariposa. During the tourist season, respondent works full time. But for a few months each year, there is no work, and respondent's employer lays her off. During those months, after a two-week waiting period, respondent collects unemployment benefits. When respondent has work, she earns \$900 a month. When she collects unemployment benefits, she collects \$500 a month. Since her husband became disabled they also receive assistance of \$100 a month and \$380 in food stamps.

21. Respondent and her husband have a house payment of \$300 a month and a car payment of \$204 per month. Mr. Coats testified that, since he became disabled, they "barely get by month to month and get really close on groceries by the end of a month." He said they borrowed \$20 from his mother "today to get down here for this hearing."

22. Mr. Coats was a very credible witness. He appeared to be very sincere. His testimony was measured and thoughtful.

LEGAL CONCLUSIONS

THERE ARE GROUNDS TO SUSPEND OR REVOKE RESPONDENT'S LICENSE

1. By reason of the matters set forth in Factual Findings 3 through 6, it is determined that respondent has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician. Thus, pursuant to Business and Professions Code section 4301, subdivision (1), there are grounds to suspend or revoke respondent's license.

2. By reason of the matters set forth in Factual Findings 3 through 7, it is determined that the crime of which respondent was convicted is one involving moral turpitude. Thus, pursuant to Business and Professions Code section 4301, subdivision (f), there are grounds to suspend or revoke respondent's license.

3. By reason of the matters set forth in Factual Findings 8 through 11, it is determined that respondent violated statutes regulating controlled substances. Possession of methamphetamine is a violation of Health and Safety Code section 11377, subdivision (a), and possession of marijuana is a violation of Health and Safety Code section 11550, subdivision (a). Thus, pursuant to Business and Professions Code section 4301, subdivision (j), there are grounds to suspend or revoke respondent's license.

SIMPLE POSSESSION OF A CONTROLLED SUBSTANCE IS NOT AN ACT INVOLVING MORAL TURPITUDE OR CORRUPTION

4. Complainant alleges that respondent's illegal possession of controlled substances constituted acts of moral turpitude or corruption and that, pursuant to Business and Professions Code section 4301, subdivision (f), there is an additional ground to suspend or revoke respondent's license. That allegation is not well founded. Simple possession – without an intent to sell – is not an act of moral turpitude or corruption. And there is no evidence that respondent ever sold or intended to sell drugs.

5. In *Rice v. Alcoholic Beverage Control Appeals Board*,² the court of appeal observed that moral turpitude is an elusive concept but that certain crimes may establish moral turpitude as a matter of law.

The elusive concept of “moral turpitude” has long been the subject of judicial scrutiny; our courts have grappled with the amorphous term in a variety of factual contexts largely involving [license] disciplinary proceedings. [Citations.]

Notwithstanding its frequency of use as a legislatively imposed standard of conduct for purposes of discipline, the concept by nature defies any attempt at a uniform and precise definition. For nearly 40 years our highest court has defined moral turpitude as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man” [citation] or “everything done contrary to justice, honesty, modesty or good morals.” [Citations.] Yet it is innately a relative concept depending upon both contemporary moral values and the degree

² *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30.

of its inimical quality [citation] whose purpose as a legislated standard is not punishment but protection of the public. [Citations.]

While not every public offense may involve conduct constituting moral turpitude without a showing of moral unfitness to pursue a licensed activity [citation] conviction of certain types of crimes may establish moral turpitude as a matter of law. [Citation.] Thus, moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for purposes of personal gain or other corrupt purpose [citation] but not in other crimes which neither intrinsically reflect similar inimical factors nor demonstrate a level of ethical transgression so as to render the actor unfit or unsuitable to serve the interests of the public in the licensed activity. [Citations.]³

6. In *People v. Castro*⁴ the Supreme Court of California dealt with the concept of moral turpitude in a context other than a license disciplinary proceeding. Part of Proposition 8, which was passed in 1983 as the so-called Victims' Bill of Rights, required courts to permit the use of prior felony convictions "without limitation" for impeachment in criminal proceedings. That is, it created an expanded felony impeachment rule. In *Castro* the court determined that only prior felonies that involved some moral depravity were relevant in assessing the veracity of a witness. The court held that, unless Proposition 8 were limited to account for that, it would run afoul of the fourteenth amendment to the United States Constitution. Thus, the court held that the expanded felony impeachment rule could be applied only with regard to convictions that had involved moral turpitude. Then the court addressed the matter of the prior felony of which the defendant, Castro, had been convicted, simple possession of heroin – simple possession, that is, as opposed to possession for sale. And the court held that simple possession of heroin does not necessarily involve moral turpitude. The court distinguished possession for sale and said that possession for sale does involve moral turpitude, because it involves the intent to corrupt others.⁵

7. Courts have addressed the distinction between simple possession and possession for sale in the context of license discipline, also. In *Von Durjais v. Board of Trustees*,⁶ the court held that a finding of possession of marijuana or peyote – without more –

³ *Id.* at pp. 36-37.

⁴ *People v. Castro* (1985) 38 Cal.3d 301.

⁵ *Id.* at pp. 313-317.

⁶ *Von Durjais v. Board of Trustees* (1978) 83 Cal.App.3d 681.

does not constitute immoral conduct as a matter of law. The court said:

It is now well established that whether an offense relating to possession of prohibited substances as here involved constitutes immoral conduct presents a factual issue to be determined in light of all of the surrounding facts and circumstances. [Citations.] Not only was no such finding made, but the Commission expressly determined that the evidence failed to establish the charge of immoral conduct. The trial court's reasoning equating [a] . . . finding of unlawful possession as immoral conduct per se is unsound and must be rejected.⁷

8. With regard to certain professional licenses, the legislature has made the illegal use of drugs a matter of unprofessional conduct and grounds for imposing discipline. That, however, does not change the fact that possession or use is not necessarily immoral. Without something more, they do not constitute moral turpitude.

9. In *In re Lesansky*⁸ the Supreme Court of California dealt with attorney misconduct. The Court emphasized that criminal conduct involves moral turpitude in three circumstances – when it shows a deficiency in a character trait necessary for the practice of law, when it involves such a serious breach of duty that it would be likely to undermine public confidence in the legal profession, and when it involves such a flagrant disrespect for the law that it would be likely to undermine public confidence in the legal profession. The Court said:

In reaffirming that attorneys may be disbarred for criminal acts committed in a nonprofessional setting, we do not hold that such discipline may be imposed for any act evidencing a moral lapse or infirmity, however slight. Attorney discipline is imposed when necessary “to protect the public, to promote confidence in the legal system, and to maintain high professional standards” [citation] and the term “moral turpitude” is defined by reference to this purpose. As we have in the past, we acknowledge here that the term “cannot be defined with precision.” [Citation.] Nevertheless, we can provide this guidance: Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to

⁷ *Id.* at p. 688.

⁸ *In re Lesansky* (2001) 25 Cal.4th 11.

society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession. [Citations.]⁹

10. Simple possession is not an act of moral turpitude or corruption.

BUSINESS AND PROFESSIONS CODE SECTION 4301, SUBDIVISION (h), IS NOT A STATUTE REGULATING CONTROLLED SUBSTANCES OR DANGEROUS DRUGS.

11. Business and Professions Code section 4301, subdivisions (j), provides that the violation of any statute regulating controlled substances or dangerous drugs constitutes unprofessional conduct. And unprofessional conduct is a ground for suspending or revoking a license. Business and Professions Code section 4301, subdivisions (h), provides that administering a controlled substance to oneself is unprofessional conduct. Complainant alleges that respondent, by engaging in the unprofessional conduct identified in subdivision (h), violated a statute regulating a controlled substance and, therefore, engaged in unprofessional conduct within the terms of subdivision (j).

12. That allegation is not well founded. There are a number of state and federal statutes regulating controlled substances or dangerous drugs. Subdivision (h) is not one of them. Subdivision (h) provides an example of unprofessional conduct. It does not regulate controlled substances.

13. The evidence would have supported an allegation that Business and Professions Code section 4301, subdivision (h), provides an additional ground for imposing discipline, but complainant did not make a motion to conform the pleadings to the proof.

REHABILITATION

14. There are grounds to suspend or revoke respondent's license. The evidence, however, shows that she has made progress toward rehabilitation and that it would not be against the public interest for her to hold a probationary license subject to appropriate conditions.

15. The criminal probation that was granted in connection with the 2004 conviction did not terminate until May of 2010, just six months ago, but the incident that gave rise to the conviction occurred in July of 2004, which was more than six years ago. The period between the offense and the termination of probation was very long because the court continued the matter 18 months before placing respondent on probation. There is no excuse for a parent's hitting a 16-year-old child with her fist, and such conduct is reprehensible. But there is no evidence of respondent's having engaged in such reprehensible conduct on any

⁹ *Id.* at p. 16.

other occasion. Moreover, she completed a 52-week parenting course when the court directed her to do that.

16. Respondent's long history of using methamphetamine and her relapse in February and March of 2009 are matters of serious concern. She did, however, complete a drug dependency program, and after the relapse, she completed a relapse prevention program. There is no evidence that respondent has used drugs within the past 18 months. Respondent declared that she is "determined to save her sobriety." She said that she has learned to ask for help. When she needs help she finds someone to talk with.

17. Respondent's testimony that she is determined to continue to be free of drugs appeared to be sincere and was very credible.

18. The letters of recommendation support a conclusion that respondent has the fortitude to succeed with her resolve to be free of drugs. As noted above, Mr. Das wrote that respondent is very reliable. He said respondent always is punctual, and her work ethic is laudable. Five days a week, she does all of the laundry for approximately 110 guests. And respondent's friend, Ms. Pierce, wrote about respondent's confronting a very difficult time in her life without relapsing.

19. Respondent's progress with rehabilitation supports a determination that it would not be against the public interest for her to hold a probationary license.

RESPONDENT SHOULD BE REQUIRED TO OBTAIN CERTIFICATION

20. Pharmacy technicians are issued a license based on minimal education, training requirements, or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist. The board's disciplinary guidelines provide that, when a pharmacy technician is placed on probation, he or she should be required to obtain certification as defined by Business and Professions Code section 4202, subdivision (a)(4), prior to resuming work as a pharmacy technician. Because it has been almost seven years since respondent was licensed and because respondent has never worked as a pharmacy technician, it is particularly appropriate to require her to obtain certification.

COST RECOVERY

21. By reason of the matters set forth in Factual Finding 17, it is determined that the board's costs in this matter were \$1,209 and that, within the terms of Business and Professions Code section 125.3, those costs were reasonable.

22. In *Zuckerman v. State Board of Chiropractic Examiners*,¹⁰ a case in which the State Board of Chiropractic Examiners had disciplined a licensee, the Supreme Court of California dealt with the issue of cost recovery. The court held that “the Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that . . . [cost recovery] does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The court established five rules that an agency must observe in assessing the amount to be charged. To some extent, these rules are similar to matters one would consider in determining whether costs are reasonable. The court’s rules, however, go beyond considerations of whether the costs are reasonable. The court said:

[T]he Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor’s “subjective good faith belief in the merits of his or her position” [citation] and whether the chiropractor has raised a “colorable challenge” to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation] the Board must determine that the chiropractor will be financially able to make later payments. Finally the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a chiropractor engaged in relatively innocuous misconduct.¹¹

23. In this case, respondent did engage in the conduct that is the primary focus of the accusation, and respondent offered no evidence suggesting that assessing the full costs of investigation and prosecution would constitute an unfair penalty.

24. It is determined that this was not a case in which the agency conducted a disproportionately large investigation and prosecution to prove relatively innocuous misconduct.

25. That leaves one matter to be considered. Will respondent be financially able to make payments to reimburse the agency for its costs? By reason of the matters set forth in Factual Findings 18 through 22, it is determined that respondent will not be able to make payments to pay the board’s costs. Averaged over a year, respondent brings in roughly \$700

¹⁰ *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

¹¹ *Id.* at p. 45.

a month. She and her husband have \$100 a month in assistance and \$380 in food stamps. Thus, they have an average income, including food stamps, of \$1,180. With a house payment and car payment that total approximately \$500 a month, that leaves \$680 a month to pay all of the other expenses of a family of four. As noted above, Mr. Coats testified that, since he became disabled, they "barely get by month to month and get really close on groceries by the end of a month." On this budget, that is not surprising. It is determined that respondent will not be able to make payments to reimburse the board's costs.

ORDER

Respondent's pharmacy technician license is revoked. The revocation, however, is stayed, and respondent is placed on probation for five years. A probationary license will be issued on the following conditions:

SUSPENSION

1. As part of probation, respondent is suspended from working as a pharmacy technician for 60 days beginning the effective date of this decision.
2. During suspension, respondent shall not enter any pharmacy area or any portion of a board licensed premises – including but not limited to – wholesaler, veterinary, drug retailer, drug distributor, drug manufacturer, or other location where dangerous drugs, devices, or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding, or dispensing. Respondent shall not manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing, or dispensing of dangerous drugs, devices, or controlled substances.
3. During suspension, respondent shall not direct, control, or perform any aspect of the practice of pharmacy.
4. Failure to comply with this suspension shall be a violation of probation.

CERTIFICATION PRIOR TO RESUMING WORK

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

7. During suspension, respondent shall not enter any pharmacy area or any portion of a board licensed premises – including but not limited to – wholesaler, veterinary, drug retailer, drug distributor, drug manufacturer, or other location where dangerous drugs, devices, or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding, or dispensing. Respondent shall not manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing, or dispensing of dangerous drugs, devices, or controlled substances.

8. Failure to comply with an automatic suspension shall be a violation of probation.

OBEY ALL LAWS

9. Respondent shall obey all state and federal laws and regulations.

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

1. an arrest or issuance of a criminal complaint for violation of any provision of the pharmacy law, state and federal food and drug laws, or state and federal controlled substances laws;
2. a plea of guilty or nolo contendere in any state or federal criminal proceeding;
3. a conviction of any crime;
4. discipline, citation, or other administrative action filed by any state or federal agency that involves respondent's license or that is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device, or controlled substance.

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

REPORT TO THE BOARD

12. Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether she has complied with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be a violation of probation. Any period of delinquency in submission of reports as directed may be added to the total period 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.

INTERVIEW WITH THE BOARD

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

COOPERATE WITH BOARD STAFF

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

NOTICE TO EMPLOYERS

15. During the period of probation, respondent shall notify all present and prospective employers of this decision and the conditions and restrictions imposed on respondent by this decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent's undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge, each new pharmacist-in-charge employed during respondent's tenure of employment, and owner to provide the board with a written acknowledgment that he or she has read this decision. Respondent shall ensure that the specified persons submit timely acknowledgements to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every pharmacy of the terms and conditions of this decision in advance of respondent's commencing work at each pharmacy. Respondent must maintain a record of the notifications and provide the records to the board on request.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent's undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to provide the board with a written acknowledgment that he or she has read this decision. Respondent shall ensure that the specified persons submit timely acknowledgements to the board.

16. Failure to timely notify present or prospective employers or failure to cause employers to submit timely acknowledgements to the board shall be a violation of probation.

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

PROBATION MONITORING COSTS

18. Respondent shall pay any costs associated with probation monitoring as determined by the board. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs as directed shall be a violation of probation.

STATUS OF LICENSE

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

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

LICENSE SURRENDER WHILE ON PROBATION OR SUSPENSION

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

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

NOTIFICATION OF A CHANGE IN NAME, RESIDENCE ADDRESS, MAILING ADDRESS, OR EMPLOYMENT

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

24. Failure to timely notify the board of any change in employer, name, address, or phone number shall be a violation of probation.

TOLLING OF PROBATION

25. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must, nonetheless, comply with all of the terms and conditions of probation.

26. Should respondent, regardless of residency, for any reason, including vacation, cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of work. Any failure to provide such notification shall be a violation of probation.

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

28. "Cessation of work" means not working as a pharmacy technician, as defined in Business and Professions Code section 4115, for at least 80 hours a calendar month. "Resumption of work" means working as a pharmacy technician, as defined in Business and Professions Code section 4115, for at least 80 hours a calendar month.

NO OWNERSHIP OF LICENSED PREMISES

29. Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest or provide documentation thereof shall be a violation of probation.

ATTEND RECOVERY RELAPSE PREVENTION AND SUPPORT GROUPS

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

RANDOM DRUG SCREENING

31. Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing, breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period, and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be a violation of probation. On request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of respondent's treatment. Failure to timely provide such documentation shall be a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

32. During suspension, respondent shall not enter any pharmacy area or any portion of a board licensed premises – including but not limited to – wholesaler, veterinary, drug retailer, drug distributor, drug manufacturer, or other location where dangerous drugs, devices, or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding, or dispensing. Respondent shall not manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing, or dispensing of dangerous drugs, devices, or controlled substances. Respondent shall not resume work until notified by the board.

33. During suspension, respondent shall not direct, control, or perform any aspect of the practice of pharmacy.

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

WORK SITE MONITOR

35. Within ten (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. Respondent shall be responsible for ensuring that the work site monitor reports in writing 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 ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor or to ensure quarterly reports are submitted to the board shall be a violation of probation.

NOTIFICATION OF DEPARTURE

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

ABSTAIN FROM DRUGS AND ALCOHOL USE

37. 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. On request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of respondent's treatment. Failure to timely provide such documentation shall be a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or associated paraphernalia that is not supported by appropriate documentation shall be a violation of probation. Any physical proximity to persons using illicit substances shall be a violation of probation.

TOLLING OF SUSPENSION

38. During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose, including vacation. Any absence in excess of ten (10) days during suspension shall be a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

39. Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification shall constitute a violation of probation. On such departure and return, respondent shall not return to work until notified by the board that the period of suspension has been satisfactorily completed.

VIOLATION OF PROBATION

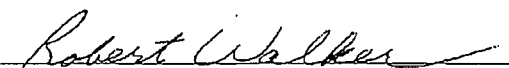
40. If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat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

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

COMPLETION OF PROBATION

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

DATED: October 26, 2010


ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART
Supervising Deputy Attorney General
4 State Bar No. 083047
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5339
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **RHONDA LEE COATS a.k.a.**
13 **RHONDA LEE NELSON**
14 **P.O. Box 1838**
15 **Mariposa, CA 95338**

Case No. 3085

ACCUSATION

16 **Pharmacy Technician Registration**
17 **No. TCH 51846,**

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 17, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 51846 to Rhonda Lee Coats a.k.a. Rhonda Lee Nelson (Respondent).
24 Respondent's license will expire on July 31, 2011, unless renewed.

25 **JURISDICTION**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Section 4300 of the Code states, in pertinent part:

“(a) Every license issued may be suspended or revoked.

“(b) The board shall discipline the holder of any license issued by the board whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

“(1) Suspending judgment

“(2) Placing him or her upon probation

“(3) Suspending his or her right to practice for a period not exceeding one year

“(4) Revoking his or her license

“(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. 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:

“(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.

* * *

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

* * *

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

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under the Pharmacy Law.” (Bus. & Prof. Code, §§ 4000, et seq.

6. Business and Professions Code section 4060 of the Code states, in pertinent part:

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

7. Health and Safety Code section 11350 states:

“(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivisions (b) and (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraphs (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.”

8. Health and Safety Code section 11357 states:

“(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.”

9. Health and Safety Code section 11377 states:

“(a) Except as otherwise provided by law . . . , every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph 11 of subdivision (c) of section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in the state, shall be punished by imprisonment in a county jail for a period of not more than one year or in a state prison.”

///

1 10. California Code of Regulations, title 16, section 1772, states:

2 "For the purpose of denial, suspension, or revocation of a personal or
3 facility license . . . , a crime or act shall be considered substantially related to the
4 qualifications, functions or duties of a licensee or registrant if to a substantial
5 degree it evidences present or potential unfitness of a licensee or registrant to
6 perform the functions authorized by his license or registration in a manner
7 consistent with the public health, safety, or welfare."

8 **DRUGS**

9 11. (a) "Methamphetamine" is a Schedule II controlled substance as designated by
10 Health and Safety Code section 11055(d) (2).

11 (b) "Marijuana" is a Schedule I controlled substance as designed by Health and
12 Safety Code section 11054(d)(13).

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Moral Turpitude or Corruption)**

15 12. Respondent is subject to disciplinary action pursuant to Code section 4301, in that she
16 violated Code section 4301, subdivision (f), by engaging in the following acts:

17 a. On or about May 8, 2006, Respondent was stopped by a Mariposa County
18 Deputy Sheriff who found a quantity of Methamphetamine and Marijuana in her backpack during
19 a search.

20 b. Respondent was under the influence of Methamphetamine at the time her
21 backpack was searched by the Deputy Sheriff.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Possession of a Controlled Substance)**

24 13. Respondent is subject to disciplinary action pursuant to Code sections 4301,
25 subdivision (j), on the basis of the following violations:

26 a. Respondent violated Code section 4060 and Health and Safety Code section
27 11377(a) by possessing Methamphetamine as set forth in paragraph 12(a) and (b) above.
28

1 b. Respondent violated Code section 4060 and Health and Safety Code sections
2 11350, subdivision (a), and 11357, subdivision (a), by possessing Marijuana as set forth in
3 paragraph 12(a) above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Self-Administration of a Controlled Substance)**

6 14. Respondent is subject to disciplinary action pursuant to Code section 4301,
7 subdivision (j), in that she violated Code section 4301, subdivision (h), by engaging in the acts
8 set forth in paragraph 13 above.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Substantially Related Crimes or Acts)**

11 15. Respondent is subject to disciplinary action pursuant to Code section 4301, for
12 violating Code section 4301, subdivision (l), as set forth in the following:

13 (a) On or about November 9, 2004, Respondent pled guilty in the Superior Court
14 for the County of Mariposa to a misdemeanor violation of California Penal Code section 273a(b),
15 in that she did, under circumstances or conditions other than those likely to produce great bodily
16 harm or death, willfully and unlawfully inflict on a child of sixteen (16) years, unjustifiable
17 physical pain or mental suffering or injure, cause, or permit such child to suffer.

18 (b) Said conviction involved a physical altercation between her sixteen-year-old
19 son and herself in which she struck her son with a closed fist under the eye.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Moral Turpitude or Corruption)**

22 16. Respondent is subject to disciplinary action pursuant to Code 4301, in that she
23 violated Code section 4301, subdivision (f), by engaging in the acts set forth in paragraph 15
24 above.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 51846, issued to Rhonda Lee Coats a.k.a. Rhonda Lee Nelson.
2. Ordering Rhonda Lee Coats a.k.a. Rhonda Lee Nelson to pay the Board of Pharmacy 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: 1/26/10 Virginia Herold

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

SA2007101247
10511615.doc