

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

In the Matter of the Accusation Against:

DOCHELLE RENAE LEWIS

Pharmacy Technician Registration
No. TCH 12910,

Respondent.

Case No. 3171

OAH No. 2008120718

DECISION

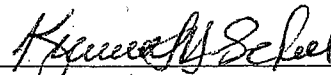
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on July 24, 2009.

It is so ORDERED on = June 24, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

BEFORE THE
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In the Matter of the Accusation Against:

DOCHELLE RENA E LEWIS

Pharmacy Technician Registration
No. TCH 12910,

Respondent.

Agency Case No. 3171

OAH Case No. 2008120718

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on March 25, 2009, in Los Angeles, California.

Thomas L. Rinaldi, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (the Board).

Dochelle Renae Lewis (Respondent) represented herself.

Complainant amended the Accusation as follows: on page four, starting at line six and ending on line seven, the words "one misdemeanor count" were changed to read "two misdemeanor counts."

At hearing, the ALJ took Respondent's testimony, but after the hearing had ended, he realized she had not taken an oath. The ALJ informed the Deputy Attorney General of this oversight by telephone and the Deputy Attorney General agreed that the ALJ could contact Respondent by telephone and acquire her affirmation thereafter. On March 25, 2009, after Respondent's testimony, the ALJ contacted Respondent by telephone, explained this oversight, and administered the oath at that time. Respondent affirmed, post-hearing, that she had provided her testimony as if under the penalty of perjury, and swore she testified truthfully at the instant hearing. The ALJ considered her testimony in reaching this Proposed Decision.

The parties submitted the matter for decision on March 25, 2009.

FACTUAL FINDINGS

1. On or about October 14, 2008, Complainant filed the Accusation. Respondent's Notice of Defense was not offered as part of the jurisdictional documents;

however, Complainant did not assert that Respondent had failed to request a hearing timely. Jurisdiction was deemed satisfied.

2. Complainant contends Respondent's pharmacy technician registration warrants discipline because Respondent has suffered two criminal convictions. Complainant further contends Respondent's convictions constitute unprofessional conduct evidencing moral turpitude; she seeks the costs of investigation and prosecution.

3. Respondent acknowledges her convictions, but contends there are mitigating circumstances, namely, that she committed the crimes under duress, at the hands of an abusive man.

4. The Board issued pharmacy technician registration number TCH 12910 to Respondent on May 17, 1994; it expires on March 31, 2010, unless renewed.

5. On October 29, 2003, following a nolo contendere plea, the Los Angeles County Superior Court, in case number MA027287, convicted Respondent of two counts of violating Penal Code section 459 (burglary), both misdemeanors. The court suspended the proceeding of sentence and placed Respondent on three years summary probation.

6. The terms and conditions of probation included, among others, serving 90 days in the county jail (less credit for two days)¹, paying approximately \$238 in fines and fees, and paying restitution, in an amount to be later determined. The evidence did not establish the amount of that restitution.

7. The facts underlying Respondent's conviction were that, on or about September 5, 2003, she stole shoes, clothes, and video games from several stores at the Antelope Valley Mall in Palmdale, California. The value of the stolen merchandise was approximately \$763. Two men accompanied Respondent when she committed the crimes.

8. Also on October 10, 2006, following a nolo contendere plea, the Los Angeles County Superior Court, in case number KA075150, convicted Respondent of violating Penal Code section 666 (petty theft with prior jail term), a felony. The court suspended proceedings and placed Respondent on three years formal probation.

9. The terms and conditions of probation included, among others, serving 365 days in the county jail, less credit for four days (three actual days and one day good time/work time), paying approximately \$251 in fines and fees, and paying restitution, in an amount to be later determined. The evidence did not establish the amount of that restitution. Respondent's jail sentences in this case and the 2003 conviction ran concurrently. Respondent served two months of the jail sentence. The evidence did not conclusively

¹ On October 10, 2006, due to a probation violation, the court modified Respondent's probation and ordered her to serve another 90 days in the county jail.

establish how she served the remainder of her sentence. Nevertheless, the evidence did establish that she completed her probation to the court's satisfaction.

10. The facts underlying this conviction were that, on or about May 21, 2006, Respondent stole several video games valued at \$299.98 from a Fry's electronics store in Industry, California. One of the men who accompanied her during her 2003 crimes was also with her during this crime. When store security approached Respondent to apprehend her, she punched the security personnel in a failed attempt to get away. She was eight months pregnant at the time.

11. On October 6, 2008, pursuant to Penal Code section 17, subdivision (b), the sentencing court reduced the felony conviction to a misdemeanor. Additionally in that case, the court terminated probation, in accordance with Penal Code section 1203.3, set aside the conviction, entered a plea of not guilty, and dismissed the case, pursuant to Penal Code section 1203.4.

12. Respondent explained at hearing that one of the men who was with her during both criminal acts was her boyfriend at the time. He severely abused Respondent mentally, physically, and sexually over many years. He would regularly hit her and threaten her with death if she ever attempted to leave him or if she failed to do what he ordered her to do. She feared for her life during the time she was with him. She did not feel she could leave him. According to Respondent, this man would force her to steal with him. Respondent would generally stand next to him in the stores while he would place items in her pockets, in bags she would carry, or in her jacket. She would then walk out of the store and he would take the items from her. This abusive man was married to another woman and had children. He would often steal items for his family, but he also regularly stole video games to then sell. The clothing items that she stole in 2003 were, according to Respondent, for his family members. She eventually got out of the relationship when he went to jail; however, she was in the midst of this abusive relationship when she was caught stealing and convicted in 2003 and 2006. She testified that she did not want to steal the merchandise, but felt forced to, given his abusive nature. She believed she would be killed or otherwise seriously harmed if she left him or if she sought the assistance of the police. For this reason, asserted Respondent, she did not explain her circumstances to the police when arrested. Respondent's family lives in Oklahoma City, Oklahoma. She has no family in California and had no one she could go to for help. Regarding her 2006 arrest at Fry's, she explained that she struck the security personnel because she was afraid of being caught.

13. Respondent testified credibly that her boyfriend severely abused her. She testified with genuine emotion and appeared believably distraught at explaining her abusive history. She was direct in her descriptions and consistent with her explanations. She also provided letters of two co-workers, supplementing her testimony, that described various occasions when they observed Respondent with bruises and lacerations at her places of employment. However, she provided no evidence to corroborate her assertions that this man forced her to steal. She did not present evidence of her character, honesty, or integrity.

14. Respondent is currently a full-time student. She attends Mount San Jacinto Community College on a full-time basis. She is completing coursework to eventually transfer to a four-year university. She hopes to transfer to the University of California, Riverside. She seeks a career as a physician's assistant or in health administration.

15. From November 2008 to January 2009, Respondent worked as a pharmacy technician for Target in Hemet, California. According to Respondent, she was laid off due to the statewide economic crisis. From 1994 to 2006, she worked as a pharmacy technician at Sav-On stores in Inglewood and Murrieta, California. As she is not currently employed, is a full-time student and a single mother, she has recently applied for public benefits as a source of income.

16. When asked what she would do if the Board issued her a probationary pharmacy technician registration, she explained that she would probably wait until the probationary period ended before seeking a job as a pharmacy technician because she fears no one would hire her with a probationary registration.

17(a). Complainant incurred \$1,382.50 in investigation and prosecution costs.

17(b). Complainant's counsel submitted a declaration stating it was his good faith estimate that, up to the date of hearing, the Office of the Attorney General would incur and bill the Board an additional two hours of time (\$316) to prepare for the prosecution of this matter.

17(c). The billing summary proffered by Complainant's counsel set forth additional paralegal costs of \$126.25 that were not sought in Complainant's counsel's declaration certifying the costs expended to investigate and prosecute this matter.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) Complainant must prove her case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Business and Professions Code section 4300 states in pertinent part:

(a) Every license may be suspended or revoked.

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

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

3. Business and Professions Code section 4301 states in pertinent 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, 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.

[¶] . . . [¶]

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

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

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

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

5. California Code of Regulations, title 16, section 1769 states in pertinent part:

[¶] . . . [¶]

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

6. Business and Professions Code section 125.3 states in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department

[of Consumer Affairs] . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

7. Respondent's crimes involve moral turpitude and dishonesty. (See *People v. Wheeler* (1992) 4 Cal.4th 284 [crimes involving theft of property are crimes of moral turpitude]; *People v. Muldrow* (1988) 202 Cal.App.3d 636, 645 [burglary is an act of dishonesty and moral turpitude].)

8. Pharmacy technicians must act with responsibility, honesty, and integrity in order to execute their job tasks. As Respondent's crimes evidence dishonesty, they are substantially related to a pharmacy technician's qualifications, functions, and duties and provide cause to revoke her pharmacy technician registration. (Bus. & Prof. Code, §§ 4300 and 4301, subs. (f) and (l).)

9. Some of the evidence bodes in Respondent's favor. She completed all requirements imposed on her by the sentencing court in both criminal actions. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(4).) It has been over five years since her first conviction and over two years since her second conviction; a moderate amount of time has passed. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(3).) The court expunged her 2006 conviction. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(5).) She is pursuing a college education to better herself. (*Ibid.*) However, while she established that she was in an abusive relationship during the time she committed the crimes at issue, the evidence failed to establish that she was forced to steal by her abusive boyfriend. She asserted this duress, but did so through her testimony alone. Saliently, she provided no evidence of her honesty, character, or integrity. (*Ibid.*) She provided no evidence to support her assertion that she was laid off for solely economic reasons from Target. It is noted that she was on criminal probation from her first conviction when she committed the second crime. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(2).) Furthermore, her explanation that she struck security personnel at Fry's because she was afraid of being caught does not adequately explain or mitigate that act of violence. Thus, while the ALJ recognizes the trauma and difficulties that Respondent has endured due to her abusive relationship, Respondent failed to present sufficient evidence to corroborate her assertions of duress. A pharmacy technician must be trusted to act with honesty and integrity, and Respondent failed to present evidence that she possesses these traits; in light of her convictions, it is necessary to revoke Respondent's pharmacy technician registration to protect the public.

10. While Complainant's costs appear fair and reasonable, given that Respondent is a single mother on public assistance and considering the Order below, it is appropriate not to award Complainant her costs in this matter.

11. Cause exists to revoke Respondent's pharmacy technician registration, for unprofessional conduct, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (f), for committing crimes involving dishonesty and moral turpitude, as set forth in Factual Findings 1-16, and Legal Conclusions 1-5 and 7-9.

12. Cause exists to revoke Respondent's pharmacy technician registration, for unprofessional conduct, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (l), for her criminal convictions that are substantially related to a pharmacy technician's qualifications, functions, and duties, as set forth in Factual Findings 1-16, and Legal Conclusions 1-5 and 7-9.

13. Cause exists to award Complainant costs, pursuant to Business and Professions Code section 125.3, as set forth in Factual Findings 1-17, and Legal Conclusions 1-9, 11 and 12. However, costs were not awarded, as discussed in Legal Conclusion 10.

ORDER

Technician registration number TCH 12910, issued to Respondent Dochelle Renae Lewis is revoked pursuant to Legal Conclusions 11 and 12, separately and together. Respondent shall relinquish her pocket technician registration to the Board within 10 days of the effective date of this Decision. Respondent may not petition the Board for reinstatement of her revoked technician registration for three years from the effective date of this Decision. A condition of reinstatement shall be that Respondent is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board.

Dated: April 20, 2009



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3171

12 DOHELLE RENAE LEWIS
13 13607 Cordary Ave., #232
Hawthorne, CA 90250

ACCUSATION

14 Pharmacy Technician Registration
No. TCH 12910

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about May 17, 1994, the Board of Pharmacy issued Original
22 Pharmacy Technician Registration Number TCH 12910 to Dòchelle Renae Lewis (Respondent).
23 The License was in full force and effect at all times relevant to the charges brought herein and
24 will expire on March 31, 2010 unless renewed.

25 JURISDICTION

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

1 4. Section 4300 permits the Board to take disciplinary action to suspend or
2 revoke a license issued by the Board.

3 5. Section 4301 states, in pertinent part:

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

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

11

12 “(l) The conviction of a crime substantially related to the qualifications, functions,
13 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
15 substances or of a violation of the statutes of this state regulating controlled substances or
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
17 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
18 The board may inquire into the circumstances surrounding the commission of the crime, in order
19 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
20 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
21 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
22 of a conviction following a plea of nolo contendere is deemed to be a conviction within the
23 meaning of this provision. The board may take action when the time for appeal has elapsed, or
24 the judgment of conviction has been affirmed on appeal or when an order granting probation is
25 made suspending the imposition of sentence, irrespective of a subsequent order under Section
26 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
27 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
28 or indictment.

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6. Section 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

7. Business and Professions Code section 125.3, subdivision (a), states, in

pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

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

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crimes)

9. Respondent is subject to disciplinary action under sections 4300 and

4301(l) in that she was convicted of the following crimes:

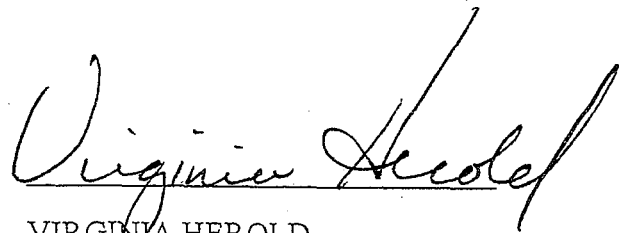
a. On or around August 7, 2006, Respondent was convicted of one felony

count of violating Penal Code section 666 (Theft with Prior Jail Term) in the Superior Court of California for the County of Los Angeles in a case entitled *The People of the State of California*

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

DATED: 10/14/08



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

Complainant

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