

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

In the Matter of the Accusation Against:

FLORA DIXON
Pharmacy Technician Registration
No. TCH 64779

Respondent.

Case No. 3207

OAH No. 2009061296

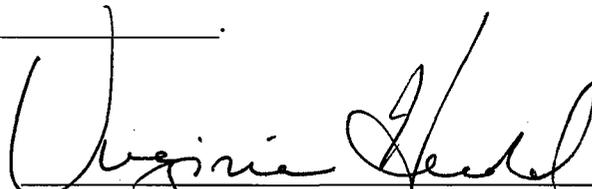
NOTICE OF DECISION AND ORDER

No action having been taken on the attached Proposed Decision, pursuant to Government Code section 11517(c)(2) the attached decision is hereby deemed adopted by operation of law on March 5, 2010, by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in the above entitled matter.

Pursuant to Government Code section 11519, this Decision shall become effective on April 4, 2010.

Date

3/10/10



VIRGINIA K. HEROLD, EXECUTIVE OFFICER
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

In the Matter of the Accusation Against:

FLORA MONIK DIXON

**Pharmacy Technician License No.
TCH 64779**

Respondent.

Case No. 3207

OAH No. L2009061296

PROPOSED DECISION

This matter came on regularly for hearing on October 30, 2009, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Kristi Gudoski Cook, Deputy Attorney General.

Flora Monik Dixon (Respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

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

2. On August 31, 2005, the Board issued Original Pharmacy Technician Registration No. TCH 64779 to Respondent. The license was in full force and effect at all relevant times. It will expire on July 31, 2011, unless renewed.

3. On December 1, 2005, at approximately 7:30 a.m., police officers entered a suspect's apartment in Los Angeles to assist a parole officer in a parole compliance check. The suspect shared the apartment with Respondent, with whom he was in a romantic relationship. Respondent was present when the police arrived.

4. During a search of the apartment, the police located an unlabeled medication bottle containing 92 tablets which were later determined to be Hydrocodone-Acetaminophen (Vicodin), a narcotic medication. The medication bottle was inside a woman's purse which was located within the apartment. Respondent denied ownership and possession of the pills.

5. The police officers arrested Respondent for violation of Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance). However, no criminal charges were filed against her.

6. The pills the officers discovered belonged to the suspect, Respondent's boyfriend. Respondent did not see the purse from which they were recovered but, because it was located in her home, she has no reason to believe it was not her purse.

7. Respondent was a pharmacy technician for Sav-On Drugs at the time of her arrest. She left Sav-On Drugs early in July of this year. She is not presently employed.

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8. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board \$6,289.50 for its costs of investigation and prosecution of the case. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 [124 Cal.Rptr.2d 701], the Court addressed the effect that an inability to pay investigation and prosecution costs could have on a respondent's ability to effectively defend against a board's Accusation.¹ The Court stated:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5^[2] does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the 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 to prove that a chiropractor engaged in relatively innocuous misconduct. [footnote omitted.] (*Id.* at 45.)

9. Respondent is not employed, and she is not in a financial position to pay almost \$6,300 in costs. Complainant spent 7.0 hours of investigation time, 30.5 hours of Deputy Attorney General time, and 5.5 hours of paralegal time to prove only what Respondent admitted--that she was in possession of 92 pills that did not belong to her. Respondent was justified in raising a "colorable challenge" to the charges against her, and she should not be penalized for doing so by being burdened with a substantial cost bill she cannot afford.

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¹ *Zuckerman* involved a chiropractor, but the Court's reasoning is equally applicable to pharmacy technicians.

² Regulation 317.5 is the Board of Chiropractic Examiners' cost recovery provision. The Court's reasoning applies equally to Business and Professions Code section 125.3.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

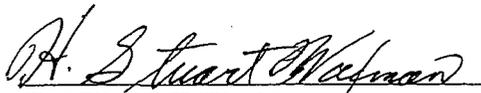
1. Cause exists to discipline Respondent's pharmacy technician license, pursuant to Business and Professions Code sections 4060 and 4301, subdivision (j), for possession of a controlled substance, as set forth in Findings 3, 4, 5 and 6.
2. Cause exists to order Respondent to pay costs claimed under Business and Professions Code section 125.3, as set forth in Finding 8. However, because of Respondent's financial position, costs will not be imposed pursuant to *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 [124 Cal.Rptr.2d 701].
3. Police officers discovered 92 Vicodin tablets in an unlabeled container inside Respondent's purse. Complainant neither alleged nor proved that Respondent used the tablets, or that she possessed them for sale, or that she suffered from any kind of substance dependence, or even that the tablets belonged to her. The entire substance of the case is that Respondent was found in possession of tablets that belonged to her boyfriend. Although she was arrested for that possession, she was not prosecuted for it. Respondent's conduct was wrongful, but that conduct does not justify substantial or lengthy discipline. A public reproof will best protect the public without imposing overly harsh and punitive discipline on Respondent.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Respondent is hereby publicly reproofed under the provisions of Business and Professions Code section 495 for the conduct specified in Legal Conclusion No. 3.
2. Complainant's request for cost recovery is denied.

DATED: November 23, 2009


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KRISTI GUDOSKI COOK, State Bar No. 185257
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 620-6343
Facsimile: (213) 897-2804
6

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:

Case No. 3207

12 FLORA MONIK DIXON
8526 Saturn Street, #3
13 Los Angeles, CA 90035

A C C U S A T I O N

14 Pharmacy Technician License No. TCH 64779

15 Respondent.

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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 August 31, 2005, the Board of Pharmacy (Board) issued
22 Pharmacy Technician License Number TCH 64779 to Flora Monik Dixon (Respondent). The
23 Pharmacy Technician License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on July 31, 2009, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 **COST RECOVERY PROVISION**

2 8. Section 125.3 states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct/Possession of a Controlled Substance)

8 9. Respondent is subject to disciplinary action under section 4301,
9 subdivision (j), and section 4060, for possessing a controlled substance. On or about December
10 1, 2005, police officers responded to a suspect's residence to arrest him for a parole violation.
11 Respondent was present at the suspect's residence. During a search of the suspect's residence,
12 one of the officers observed a bottle containing pills, with no prescription label visible, inside a
13 woman's purse. The officer asked Respondent if she had a prescription for the pills, and she
14 answered, "No." The officers arrested Respondent for violating Health and Safety Code section
15 11350, subdivision (a) [possession of a controlled substance]. The pills were later identified as
16 Hydrocodone-Acetaminophen. No criminal case was filed against Respondent as a result of this
17 arrest.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician License Number TCH
22 64779, issued to Flora Monik Dixon;

23 2. Ordering Flora Monik Dixon to pay the Board the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section

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1 125.3; and

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

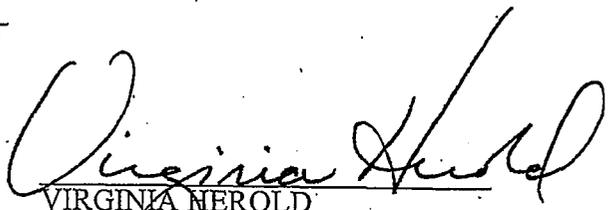
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4 DATED: 5/14/09

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

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