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

In the Matter of the Accusation Against: **KAREN ANISSA THOMAS** 1017 W. Ave H-6 Lancaster, CA 93534 Pharmacy Technician Registration No. TCH 39656 Respondent.	Case No. 3352 OAH No. 2010020365

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 December 17, 2010.

It is so ORDERED November 17, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

BEFORE THE
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STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KAREN ANISSA THOMAS** **Pharmacy Technician Registration No. TCH 39656** **Respondent.**	**Case No. 3352** **OAH No. 2010020365**

PROPOSED DECISION

This matter came on regularly for hearing on August 23, 2010, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Randy Mailman, Deputy Attorney General.

Karen Anissa Thomas (Respondent) was present and represented herself.

Oral and documentary evidence was received. The record was held open to and including September 13, 2010, for Respondent to submit additional documentation. The documentation was timely received and was marked and admitted as Respondent's Exhibit A. On September 13, 2010, the record was closed, and the matter was deemed 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 April 26, 2002, the Board issued Original Pharmacy Technician Registration No. TCH 39656 to Respondent. The license will expire on October 31, 2011, unless renewed.

3. On or about August 22, 2001, Respondent submitted to the Board her Application for Registration as a Pharmacy Technician. She signed the application certifying, under penalty of perjury, that the information she provided was true. Question No. 7 on the application read:

> Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code sections 1000 or 1203.4. Traffic violations of $500 or less need not be reported. **If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.** (Emphasis in text.)

4. Respondent checked the box marked "no" in response to Question No. 7. That answer was false. Between 1997 and 1999, Respondent suffered five misdemeanor convictions for driving with a suspended license.

5. Respondent explained that she understood the question but did not believe disclosure of the five convictions was necessary because they were all "traffic violations of $500 or less." Respondent was incorrect. Despite the ambiguity between requiring disclosure of all misdemeanors, and not requiring disclosure of traffic "violations" (as opposed to traffic infractions) of "less than $500," the sentences in four of Respondent's five convictions included payment of fines and fees exceeding $1,100. Only one case involved a payment of less than $500.

6. On January 12, 2009, in the Superior Court of California, County of Los Angeles, in Case No. MA036280, Respondent pled nolo contendere and was convicted of violating Penal Code section 487, subdivision (a) (Grand theft of property valued at over $400), a felony substantially related to the qualifications, functions, and duties of a pharmacy technician. On November 9, 2009, the court granted Respondent's motion to reduce the matter to a misdemeanor pursuant to Penal Code section 17, subdivision (b).

7. Respondent was placed on formal probation for a period of three years under various terms and conditions including incarceration in the Los Angeles County Jail for two days with credit for two days served, and payment of restitution of $1,000. The court waived other fines and fees. Respondent was also ordered to stay away from all Sav-On stores. On November 9, 2009, the court vacated the formal probation order and permitted Respondent to remain on summary probation.

8. The facts and circumstances underlying the conviction are that, while employed as a pharmacy technician at a Sav-On Pharmacy, Respondent embezzled approximately $1,000 by falsifying "refunds" and taking the money for her own use. Respondent took the money because she was having financial difficulties. At the administrative hearing, Respondent admitted that she "didn't think properly" when she embezzled her employer's funds.

9. Respondent offered no evidence of rehabilitation.

10. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board $3,144 for its costs of prosecution of the case. The costs are deemed just and reasonable.

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's registration, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (f), for conviction of a substantially related crime, as set forth in Findings 6, 7, and 8.

2. Cause exists to discipline Respondent's pharmacy technician's registration, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (l), for unprofessional conduct-moral turpitude, as set forth in Findings 3, 4, 5, 6, 7, and 8. Respondent's dishonest acts with respect to both her misrepresentation on her application and her embezzlement constitute acts of moral turpitude.

3. Cause exists to discipline Respondent's pharmacy technician's registration, pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (f) and (g), for making a material misrepresentation on an application, as set forth in Findings 3, 4, and 5.

4. Cause exists to order Respondent to pay costs claimed under Business and Professions Code section 125.3, as set forth in Finding 10.

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5. Respondent engaged in dishonesty in failing to disclose her convictions on her application for a pharmacy technician registration. She again engaged in dishonesty by embezzling funds belonging to her employer. In *Golde v. Fox* (1979) 98 Cal.App.3d 167, the court stated:

> The crime here, of course, does not relate to the technical or mechanical qualifications of a real estate licensee, but there is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice. (*Id.* At 176.)

6. Respondent offered no evidence of rehabilitation, and she remains on criminal probation. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

7. The public safety, welfare and interest cannot be adequately protected should Respondent be permitted to retain her pharmacy technician registration.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Pharmacy technician registration number TCH 39656, issued to Respondent, Karen Anissa Thomas, is revoked pursuant to Legal Conclusions 1, 2, and 3, separately and together. Respondent shall relinquish her wall license and pocket renewal license, if any, to the Board within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of her revoked license for three years from the effective date of this decision.

2. Respondent shall pay to the Board its costs of prosecution in the amount of $3,144 within 90 days of the effective date of this decision.

DATED: September 15, 2010

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

In the Matter of the Accusation Against: KAREN ANISSA THOMAS 1017 W. Ave H-6, Lancaster, CA 93534 Pharmacy Technician Registration No. TCH 39656 Respondent.	Case No. 3352 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 26, 2002, the Board of Pharmacy issued Original Pharmacy Technician Registration Number TCH 39656 to Karen Anissa Thomas (Respondent.) The License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section

references are to the Business and Professions Code unless otherwise indicated.

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

5. Section 4301 states, in pertinent part:

"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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

"(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.

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 Crime)

9. Respondent is subject to disciplinary action under sections 4300 and 4301(l) in that on or around January 12, 2009, Respondent was convicted of one felony count of

violating Penal Code section 487(a) (Grand Theft by Embezzlement) in the Superior Court of California for the County of Los Angeles in a case entitled *The People of the State of California v. Karen Anissa Thomas* (Case No. MA036280.) The circumstances concerning the conviction are that between July 18 and September 13, 2006, while employed as a pharmacy technician at Sav On Drug Store, Respondent unlawfully took money and personal property from Sav On in an amount exceeding four hundred dollars.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Moral Turpitude)

10. Respondent is subject to disciplinary action pursuant to sections 4300 and 4301, subdivision (f) on the grounds of unprofessional conduct in that she committed acts involving moral turpitude as further described in paragraph no. 9.

THIRD CAUSE FOR DISCIPLINE

(Misrepresentation)

11. Respondent is subject to disciplinary action pursuant to sections 4300 and 4301, subdivisions (f) and (g), in that she made a material misrepresentation on an application for a pharmacy technician registration submitted to the Board in or around October, 2001. Respondent certified under penalty of perjury to the truthfulness of all of the responses provided to the questions contained in the application. Question No. 7 of the application asked whether Respondent had ever been convicted of or pled no contest to a violation of any state laws including misdemeanors. Respondent responded "no", when in fact she had been convicted of the following crimes:

a. On or around November 30, 1999, Respondent pled no contest to one misdemeanor count of violating Vehicle Code section 14601.1(A) (Driving with a Suspended License) in a case entitled *The People of the State of California v. Karen Anissa Thomas* in the Superior Court of California for the County of Los Angeles (Case No. 9AT05840.)

b. On or around November 9, 1999, Respondent pled no contest to one misdemeanor count of violating Vehicle Code section 14601.1(A) (Driving with a Suspended License) in a case entitled *The People of the State of California v. Karen Anissa Thomas* in the

Superior Court of California for the County of Los Angeles (Case No. 7AT00965.)

c. On or around November 9, 1999, Respondent pled no contest to one misdemeanor count of violating Vehicle Code section 14601.1(A) (Driving with a Suspended License) in a case entitled *The People of the State of California v. Karen Anissa Thomas* in the Superior Court of California for the County of Los Angeles (Case No. 8AT03212.)

d. On or around November 9, 1999, Respondent pled no contest to one misdemeanor count of violating Vehicle Code section 14601.1(A) (Driving with a Suspended License) in a case entitled *The People of the State of California v. Karen Anissa Thomas* in the Superior Court of California for the County of Los Angeles (Case No. 8AT04015.)

e. On or around November 7, 1997, Respondent pled no contest to one misdemeanor count of violating Vehicle Code section 14601.2(A) (Driving with a Suspended License) in a case entitled *The People of the State of California v. Karen Anissa Thomas* in the Superior Court of California for the County of Los Angeles (Case No. 7AT04760.)

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 39656, issued to Karen Anissa Thomas;

2. Ordering Respondent 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: 10/27/09

Virginia Herold

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

Complainant

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