

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

In the Matter of the Petition for
Reinstatement of:

JENNIFER WEST-LACKEY

Pharmacist's License No. RPH 41647

Respondent.

OAH No. 2009070408

DECISION

This matter was heard on July 16, 2009, in Los Angeles by a quorum of the Board of Pharmacy as follows: Kenneth Schell, President; Randy Kajioka, Vice-President; Shirley Wheat; Gregory Lippe; Ramon Castellblanch; Stanley Weisser; and Rob Swart.

Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, presided over the hearing. Brian Walsh, Deputy Attorney General, appeared under authority of Business and Professions Code (BPC) section 4309 and Government Code section 11522. Petitioner Jennifer West-lackey was present and represented by Judith Tishkoff, Attorney at Law.

Oral and documentary evidence having been received in the hearing and the matter submitted and considered in closed session, the Board of Pharmacy finds and decides as follows:

FACTUAL FINDINGS

1. On or about April 23, 1988, the Board of Pharmacy (Board) issued pharmacist's license no. RPH 41647 to Jennifer Jean West-Lackey (petitioner). Said pharmacist license has been revoked and currently is not in full force or effect for the reasons described below.

2. (A) Effective on May 2, 2003, pursuant to a Stipulation, Decision, and Order in the *matter of the Accusation against Jennifer West-Lackey*, Case No. 2459,

the Board revoked the pharmacist's license previously issued to petitioner, stayed the revocation, and placed respondent on probation for five (5) years on certain terms and conditions, including that she complete treatment in the Pharmacists Recovery Program, participate in random drug screening, abstain from drugs and alcohol use, and pay costs of \$6,500.

(B) The Board placed respondent on probation for unprofessional conduct because she admitted that, while employed as a pharmacist at a retail establishment in Folsom in early 2000, she committed acts involving moral turpitude, dishonesty, fraud, and deceit by stealing Xanax and Ritalin from the pharmacy in violation of BPC section 4301, subdivision (f). She furnished and dispensed Xanax and Ritalin to herself without having prescriptions in violation of BPC section 4301, subdivision (o), in conjunction with sections 4059, subdivision (a), and 4060, and section 4301, subdivision (j), in conjunction with Health and Safety Code sections 11158, subdivision (a), 11170, and 11377. She also administered Xanax and Ritalin to herself to the extent that was dangerous to herself or such that her ability to safely conduct the practice of pharmacy was impaired in violation of BPC section 4301, subdivision (h).

3. Two years later, on July 5, 2005, in Case No. 2867, the Executive Officer of the Board made and filed an Accusation and Petition to Revoke Probation against petitioner. The Accusation and Petition to Revoke Probation was properly served upon petitioner who then failed to file a Notice of Defense, waiving her right to a hearing.

4. (A) On November 23, 2005, pursuant to a Default Decision and Order in Case No. 2867, the Board revoked respondent's probation, reinstated its order of revocation, and revoked the pharmacist's license issued to respondent. The Board also ordered respondent to pay for its reasonable costs of investigation and enforcement in the amount of \$2,259.50.

(B) Under the Default Decision and Order, the Board determined that petitioner violated probation and subjected her license to discipline by failing to comply with the terms and conditions of her probation. The Board found that petitioner used alcoholic beverages to the extent or in a manner dangerous or injurious to herself or other persons in violation of BPC section 4301, subdivision (h); and committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption by lying during a mental health examination, lying to her health support group, and falsely documenting attendance at various recovery groups as part of her participation in the Pharmacists Recovery Program in violation of BPC section 4301, subdivision (f). The Board also found that respondent violated conditions of her probation by failing to obey state laws substantially related to or governing the practice of pharmacy, to wit: BPC section 4301, subdivisions (h) and (f); failing to successfully complete her treatment contract and having been terminated from the Pharmacists

Recovery Program; failing to submit to random body fluid test; and failing to completely abstain from the possession or use of alcohol.

5. The Board's Order revoking the pharmacist license issued to petitioner became effective on December 23, 2005. It has now been three and one-half years since the revocation of petitioner's license.

6. On or about April 14, 2009, petitioner filed a Petition for Reinstatement of Certificate to Practice Pharmacy Revoked Through Administrative Disciplinary Action with the Board. In support of her petition, she also submitted letters of recommendation, continuing education certificates and documents, and documentation of her participation in recovery programs and employment,

7. (A) Petitioner admits that she was addicted to narcotics, hypnotics, and alcohol. While working as a pharmacist, she used Ritalin during the day. She used Xanax and alcohol at night to relax. She attended several drug and alcohol recovery programs but did not complete them. After she stopped working as a pharmacist in July 2004, petitioner used only alcohol.

(B) On November 15, 2006, which was over two years after the revocation of her pharmacist's license, petitioner stopped drinking alcoholic beverages. On November 22, 2006, she enrolled in two out-patient chemical dependency and recovery programs. On weekdays from November 22, 2006, through January 2, 2007, petitioner attended and successfully completed the New Dawn Recovery Program in Citrus Heights. She met all of her treatment goals there, including abstinence, active participation in the recovery program, establishing a sober support group, and completing all of her assignments. She demonstrated behavioral changes, studied boundaries, worked on her communication skills, and addressed self-esteem and assertiveness issues. She gained insight into her disease of addiction, learned coping skills without the use of drugs. Upon discharge from the New Dawn Recovery Program, petitioner was happy, confident, and healthy. In accordance with her after-care program, she then attended 12-step meetings four times weekly and the New Dawn Recovery Program's after-care program on Saturdays.

(C) From November 22, 2006, through November 2007, petitioner also completed the 12-month treatment program at Kaiser Chemical Dependency Services in Folsom. Every week since November 2006, she has been attending approximately four 12-step meetings and one meeting with her sponsor. Since completing the formal Kaiser program in November 2007, she has been receiving individual counseling and recovery support from a Kaiser licensed clinical social worker who indicates that petitioner "has made tremendous growth in her recovery" and changes in her life and is committed to her recovery from drug and alcohol addiction. After undergoing surgery to donate her kidney to a relative, petitioner worked closely with

persons in her support system to monitor her use of pain medication and then took only minimal dosages of pain medication.

8. Petitioner has abstained from drugs and alcohol and has been clean and sober now for two years and eight months. She continues to attend three to four meetings each week of Alcoholics Anonymous (AA) and has consulted with the same AA sponsor for the past two years. Petitioner is also an AA sponsor and has held different positions in her AA organization. In addition, petitioner meets with her addiction recovery counselor at the Kaiser program once monthly.

9. Since March 2006, petitioner has been employed as a customer service representative at Health Net of Rancho Cordova. She has received excellent performance evaluations and been promoted in her classification. As a Customer Service Representative III, she answers questions regarding policies and procedures, helps to train new hires, and participates as a member of an emergency response team. Petitioner participated in team meetings and worked with her supervisor, operated in compliance with laws and regulations, followed schedules, and completed all required training. She has been a competent and resourceful employee for Health Net. If allowed to practice pharmacy again, petitioner hopes to transfer to the pharmacy department at Health Net.

10. Petitioner is remorseful and apologizes for her violations that led to the revocation of her pharmacist's license. She admits that she has a disease and/or addiction to drugs and alcohol and recognizes that her recovery from substance abuse is a long-life struggle. Petitioner is likewise candid about her addiction. If her license is reinstated and she starts working again as a retail pharmacist with access to drugs, petitioner realizes that she may start thinking about her drug addiction and she will have to confront that issue. However, petitioner values the life that she has rebuilt and is committed not to do anything to jeopardize that life. She has developed a strong support group comprised of her AA group members and sponsor, Kaiser therapist, and friends and family. Petitioner has learned coping skills as well as the efficacy of calling persons in her support group to maintain her sober lifestyle.

11. (A) From February 2007 through April 2009, petitioner completed 76 hours of continuing education classes. The Board approved 71.5 of those hours. Petitioner also attends monthly meetings of the Sacramento Valley Pharmacist Association and the Sacramento Valley Society of Health System Pharmacists.

(B) Petitioner has paid the Board for all of its costs of investigation and prosecution. Under Case No. 2459, for which she was placed on probation in 2003, petitioner paid the costs of \$6,500. Under Case No. 2867, which resulted in the revocation of her license in 2005, petitioner paid the costs of \$2,369.

(C) Petitioner is active in her church in Citrus Heights and committed to her faith. She teaches children at Sunday School and Vacation Bible School, is a

lector at Sunday services, participates in the choir, and acts as a church and faith mentor to a junior high student.

12. Petitioner is married and has a teenage son. She trains for and runs endurance races. Petitioner's husband and son love and support her. She testified in a sincere and credible manner.

* * * * *

Based on the foregoing findings of fact, the Board of Pharmacy makes the following determination of issues:

LEGAL CONCLUSION

Grounds exist to grant the petition to reinstate petitioner's pharmacist's license pursuant to Business and Professions Code section 4309 and Government Code section 11522, based on Findings 1 – 12 above. Petitioner has demonstrated significant progress in her rehabilitation and recovery from drug and alcohol addiction as well as from her past violations of the Pharmacy Law that led to the revocation of her license. She has completed two recovery treatment programs and has continued to attend group and individual support and therapy sessions. Petitioner has also been an excellent employee at Health Net as a customer service representative and actively participates in community activities. Because her recovery from her drug and alcohol addiction is relatively recent and she has not worked as a pharmacist for five years, public interest, welfare, and safety require that petitioner's pharmacist's license be reinstated under probationary conditions to ensure not only public protection but also her continued recovery.

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Wherefore, the following Order is hereby made:

ORDER

The petition of Jennifer West-Lackey for reinstatement of her pharmacist's license no. RPH-41647 is hereby granted. A license will be issued to petitioner; provided, however, said license shall be immediately revoked, the order of revocation will be stayed, and petitioner shall be placed on probation for a period of three (3) years on the following terms and conditions:

1. Obey All Laws

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

Petitioner shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- ♦ 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;
- ♦ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- ♦ a conviction of any crime;
- ♦ discipline, citation, or other administrative action filed by any state and federal agency which involves petitioner's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for of any drug, device or controlled substance.

2. Reporting to the Board

Petitioner 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 by the Board or its designee. Among other requirements, petitioner shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be

automatically extended until such time as the final report is made and accepted by the Board.

3. Interview with the Board

Upon receipt of reasonable notice, petitioner 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 a scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperation with Board Staff

Petitioner shall cooperate with the Board's inspection program and in the Board's monitoring and investigation of petitioner's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

6. Notice to Employers

Petitioner shall notify all present and prospective employers of the Decision in Case Number 2009070408 and the terms, conditions and restrictions imposed on petitioner by the Decision.

Within 30 days of the effective date of this Decision, and within 15 days of petitioner undertaking new employment, petitioner shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during petitioner's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the Decision in Case Number 2009070408 and the terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the Decision in Case Number 2009070408 in advance of petitioner commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this Decision, and within 15 days of petitioner undertaking new employment by or through a pharmacy employment service, petitioner shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the Decision in Case Number 2009070408 and the terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

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

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, petitioner shall not supervise any intern pharmacist, is the pharmacist-in-charge, or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Probation Monitoring Costs

Petitioner shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Petitioner shall, at all times while on probation, maintain an active, current license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If petitioner's 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, upon renewal or reapplication, petitioner's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender while on Probation/Suspension

Following the effective date of this decision, should petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner may tender her license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, petitioner will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of petitioner's license history with the Board.

Upon acceptance of the surrender, petitioner shall relinquish her pocket license and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Petitioner may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

11. Notification of Name Change, Residence or Mailing Address or Employment

Petitioner 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. Petitioner shall notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or telephone number.

Failure to timely notify the Board of any change in employer(s), names(s), address(es), or telephone number(s) shall be considered a violation of probation.

12. Tolling of Probation

Except during periods of suspension, petitioner shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month or as otherwise directed by the Board. 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, petitioner must nonetheless comply with all terms and conditions of probation.

Should petitioner, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for the minimum of 80 hours per month in California or as otherwise directed by the Board, petitioner must notify the Board in writing within ten (10) days of cessation of the practice, and must further notify the Board in writing within ten (10) days of the resumption of the practice of pharmacy. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for petitioner'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.

"Cessation of practice" means any calendar month during which petitioner is not practicing as a pharmacist for least 80 hours or as otherwise directed by the Board, as defined in Business and Professions Code section 4000 et seq. "Resumption of practice means any calendar month during which petitioner is practicing as a pharmacist for at least 80 hours or as otherwise directed by the Board as a pharmacist as defined by Business and Professions Code section 4000 et seq.

Petitioner is required to practice as a pharmacist in a licensed pharmacy setting that dispenses medication for a minimum of one (1) year prior to the completion of probation. After the first year of probation, the Board or its designee may consider a modification of this requirement. If petitioner fails to comply with this requirement or a subsequent modification thereof, such failure shall be considered a violation of probation.

13. Pharmacist Examination

Petitioner shall take and pass the California Jurisprudence Examination (CPJE) within six (6) months of the effective date of this Decision. If petitioner fails to take and pass the examination within six months after the effective of this Decision, petitioner shall be automatically suspended from practice. Petitioner shall not resume the practice of pharmacy until she takes and passes the CPJE and is notified, in writing, that she has passed the examination and may resume practice. Petitioner shall bear all costs of the examination required by the Board.

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

dangerous drugs and controlled substances. Petitioner shall not resume practice until notified by the Board.

During suspension, petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, petitioner may continue to own or hold an interest in any pharmacy in which she holds an interest at the time this Decision becomes effective unless otherwise specified in this Order. Failure to comply with this suspension shall be considered a violation of probation.

If petitioner fails to take and pass the CPJE examination after four attempts, petitioner shall successfully complete, at a minimum, sixteen (16) additional semester units of pharmacy education as approved by the Board. Failure to complete coursework as required shall be considered a violation of probation. Failure to take the examination within one (1) year of the effective date of this Decision shall be considered a violation of probation.

14. Pharmacists Recovery Program (PRP)

Within thirty (30) days of the effective date of this Decision, petitioner shall contact the Pharmacists Recovery Program for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. The costs for PRP participation shall be borne by petitioner.

If petitioner is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this Decision is no longer considered a self-referral under Business and Professions Code section 4363, subdivision (c)(2). Petitioner shall successfully participate in and complete her current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until petitioner successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended upon notice by the Board. Petitioner may not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

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 result in the automatic suspension of practice by petitioner and shall be considered a violation of probation. Petitioner may not resume the practice of pharmacy until notified by the Board in writing.

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

During suspension, petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, petitioner may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this Decision becomes effective unless otherwise specified by the Board. Failure to comply with this suspension shall be considered a violation of probation.

Petitioner shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation of probation. The Board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

Petitioner shall work in a pharmacy setting with access to controlled substances for six (6) consecutive months before successfully completing probation. If petitioner fails to do so, probation shall be automatically extended until this condition has been met. Failure to satisfy this condition within six (6) months beyond the original date of expiration of the term of probation shall be considered a violation of probation.

15. Random Drug Screening

Petitioner, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board or its designee. Petitioner

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, petitioner 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 submit to testing as directed shall constitute a violation of probation. Upon request of the Board or its designee, petitioner shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by petitioner. Petitioner may not resume the practice of pharmacy until notified by the Board in writing.

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

During suspension, petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, petitioner may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this Decision becomes effective unless otherwise specified by the Board. Failure to comply with this suspension shall be considered a violation of probation.

16. Abstain from Drugs and Alcohol Use

Petitioner shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, petitioner

shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of petitioner. Failure to timely provide such documentation shall be considered a violation of probation.

Petitioner shall ensure that she is not in the presence of or in the same physical location as individuals who are using illicit substances even if petitioner is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

17. Violation of Probation

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

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

18. Completion of Probation

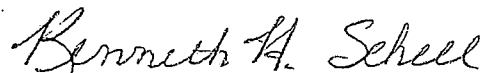
Upon written notice by the Board or its designee indicating successful completion of probation, petitioner's license will be fully restored.

IT IS SO ORDERED.

Dated: September 22, 2009

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

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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. 2459

12 JENNIFER WEST-LACKEY, also known as
13 JENNIFER JEAN LACKEY
13 131 Cohn Valley Way
14 Folsom, California 95630

STIPULATION,
DECISION AND ORDER

15 Licentiate No. RPH 41647

Respondent.

17
18 Respondent JENNIFER WEST-LACKEY, also known as JENNIFER JEAN
19 LACKEY, individually and through her attorneys, Nossaman, Guthner, Knox & Elliott, LLP, by
20 Timothy J. Aspinwall, Esquire, and complainant Patricia F. Harris, Executive Officer, Board of
21 Pharmacy, Department of Consumer Affairs, State of California, through her counsel, Deputy
22 Attorney General Diana Woodward Hagle, hereby stipulate that the following matters are true:

23 1. Respondent is a licensee of the Board of Pharmacy (hereinafter "Board")
24 and has been duly served with the Accusation on file and pending in Case No. 2459 and
25 supporting documents. A copy of the Accusation is attached hereto as though set forth at length
26 herein.

27 Respondent is subject to the jurisdiction of the Board in regard to the matters
28 alleged in the Accusation.

ORIGINAL

1 2. Respondent has consulted with her attorney, who has advised her of the
2 nature of the charges alleged in the Accusation, including the penalties requested therein, and
3 the legal effect of entering into this Stipulation.

4 3. Respondent withdraws the Notice of Defense previously filed in this
5 matter, and agrees to be bound by the terms of this Stipulation, and of the Decision and Order,
6 and freely and voluntarily waives any rights she may have in this proceeding to a hearing on the
7 charges and allegations contained in the Accusation, to reconsideration, to appeal, to judicial
8 review, and to all other rights which she may have under the California Administrative
9 Procedure Act and the laws and regulations of the State of California.

10 Respondent understands the charges and allegations of violations of the
11 California Business and Professions Code contained in Accusation No. 2459 and the content
12 and effect of this Stipulation.

13 4. Respondent admits the truth of each and every factual allegation
14 contained in Accusation No. 2459 and further admits that cause exists thereby to impose
15 discipline on her California Pharmacy License No. RPH 41647.

16 The foregoing admissions are made only for the purpose of this proceeding and
17 any subsequent proceedings between respondent and the State of California and any of its
18 agencies and any other government agency responsible for licensing or regulating the practice of
19 pharmacy. In the event this stipulation is not adopted by the Board of Pharmacy, the admissions
20 made herein shall be null and void, and may not be used by the parties for any purpose.

21 5. It is understood by respondent that, in deciding whether to adopt this
22 stipulation, the Board may receive oral and written communications from its staff and the
23 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the
24 Board or other persons from future participation in this or any other matter affecting respondent.
25 In the event this settlement is not adopted by the Board, the stipulation will not become effective
26 and may not be used for any purpose, except this paragraph, which shall remain in effect.

27 6. A signed facsimile (FAX) shall be as binding as the original.

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1 WHEREFORE, it is stipulated that the Board of Pharmacy may issue the
2 following Decision and Order:

3 DECISION AND ORDER

4 1. Licentiate No. RPH 41647, issued to Jennifer West-Lackey, is hereby
5 revoked. However, revocation is stayed and respondent is placed on probation for five (5) years
6 from the effective date of this Decision and Order, on the following terms and conditions:

7 A. OBEY ALL LAWS

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

10 Respondent shall report any of the following occurrences to the Board, in
11 writing, within 72 hours of such occurrence:

- 12 • An arrest or issuance of a criminal complaint for violation of any
13 provision of the Pharmacy Law, state and federal food and drug laws, or
14 state and federal controlled substances laws;
- 15 • A plea of guilty or *nolo contendere* in any state or federal criminal
16 proceeding to any criminal complaint, information or indictment;
- 17 • A conviction of any crime; and
- 18 • Discipline, citation, or other administrative action filed by any state and
19 federal agency which involves respondent's pharmacist license or which
20 is related to the practice of pharmacy or the manufacturing, obtaining,
21 handling or distribution or billing or charging for any drug, device or
22 controlled substance.

23 B. REPORTING TO THE BOARD

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

 C. INTERVIEW WITH THE BOARD

 Upon receipt of reasonable notice, respondent shall appear in person for
 interviews with the Board upon request at various intervals at a location to be determined by the

1 Board. Failure to appear for a scheduled interview without prior notification to Board staff shall
2 be considered a violation of probation.

3 D. COOPERATION WITH BOARD STAFF

4 Respondent shall cooperate with the Board's inspectional program and in the
5 Board's monitoring and investigation of respondent's compliance with the terms and conditions
6 of his probation. Failure to cooperate shall be considered a violation of probation.

7 E. CONTINUING EDUCATION

8 Respondent shall provide evidence of efforts to maintain skill and knowledge as
9 a pharmacist as directed by the Board.

10 F. NOTICE TO EMPLOYERS

11 Respondent shall notify all present and prospective employers of the Decision in
12 Case No. 2459 and the terms, conditions and restrictions imposed on respondent by the
13 Decision. Within thirty (30) days of the effective date of this Decision, and within fifteen (15)
14 days of respondent undertaking new employment, respondent shall cause her direct supervisor,
15 pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the
16 employer has read the Decision in Case No. 2459.

17 If respondent works for or is employed by or through a pharmacy employment
18 service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
19 every pharmacy of the terms and conditions of the Decision in Case No. 2459 in advance of
20 respondent commencing work at each pharmacy.

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

24 G. NO PRECEPTORSHIPS, SUPERVISION OF INTERNS, BEING
25 PHARMACIST-IN-CHARGE (PIC), OR SERVING AS A
26 CONSULTANT

27 Respondent shall not supervise an intern pharmacist or perform any of the duties
28 of a preceptor, nor shall respondent be the pharmacist-in-charge of any entity licensed by the
Board unless otherwise specified in this Decision.

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H. REIMBURSEMENT OF BOARD COSTS

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of Six Thousand Five Hundred Dollars (\$6,500.00). Respondent shall make an initial payment of Two Thousand Five Hundred Dollars (\$2,500.00) no later than thirty (30) days from the effective date of this Decision and shall thereafter make quarterly payments of the balance on a payment schedule established by the Board, with all payments being completed within the first three (3) years of probation. All payments shall be made by certified or cashiers' check or money order payable to "California Board of Pharmacy" and mailed or delivered to the Board offices at 400 "R" Street, Suite 4070, Sacramento, CA 95814.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

I. PROBATION MONITORING COSTS

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

J. STATUS OF LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

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

K. LICENSE SURRENDER WHILE ON PROBATION

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

1 will no longer be subject to the terms and conditions of probation.

2 Upon acceptance of the surrender, respondent shall relinquish her pocket license
3 to the Board within ten (10) days of notification by the Board that the surrender is accepted.
4 Respondent may not reapply for any license from the Board for three (3) years from the
5 effective date of the surrender. Respondent shall meet all requirements applicable to the license
6 sought as of the date the application for that license is submitted to the Board.

7 L. NOTIFICATION OF EMPLOYMENT/MAILING ADDRESS CHANGE

8 Respondent shall notify the Board in writing within ten (10) days of any change
9 of employment. The notification shall include the reasons for leaving and/or the address of the
10 new employer, supervisor or owner and work schedule if known.

11 Respondent shall notify the Board in writing within ten (10) days of a change in
12 name, mailing address or phone number.

13 M. TOLLING OF PROBATION

14 (1) Practice in California

15 Should respondent, regardless of residency, for any reason cease practicing
16 pharmacy for a minimum of eighty (80) hours per calendar month in California, she must notify
17 the Board in writing within ten (10) days of cessation of the practice of pharmacy or the
18 resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of
19 the probation period. It is a violation of probation for respondent's probation to remain tolled
20 pursuant to the provisions of this condition for a period exceeding three (3) years.

21 "Cessation of practice" means any period of time exceeding thirty (30) days in
22 which respondent is not engaged in the practice of pharmacy as defined in Business &
23 Professions Code § 4052.

24 (2) Practice in Approved Pharmacy Position

25 Respondent shall work at least forty (40) hours in each calendar month as a
26 pharmacist (in a position approved by the Board in writing to fulfill this condition of probation).
27 Failure to do so will be a violation of probation.

28 If respondent has not complied with this condition during the probationary term,

1 and respondent has presented sufficient documentation of her good faith efforts to comply with
2 this condition, and if no other conditions have been violated, the Board, in its discretion, may
3 grant an extension of respondent's probation period up to one (1) year without further hearing in
4 order to comply with this condition.

5 N. MENTAL HEALTH EXAMINATION

6 Within thirty (30) days of the effective date of this Decision, and on a periodic
7 basis as may be required by the Board, respondent shall undergo, at her own expense,
8 psychiatric evaluation(s) by a Board-appointed or Board-approved psychiatrist or psychologist.
9 Respondent shall sign a release authorizing the evaluator to furnish the Board with a current
10 diagnosis and a written report regarding respondent's judgment and ability to function
11 independently as a pharmacist with safety to the public. Respondent shall comply with all the
12 recommendations of the evaluator if directed by the Board.

13 If the psychiatrist or psychotherapist recommends, and the Board directs,
14 respondent shall undergo psychotherapy. Respondent shall, within thirty (30) days of written
15 notice of the need for psychotherapy, submit to the Board for its prior approval, the
16 recommended program for ongoing psychotherapeutic care. Respondent shall undergo and
17 continue psychotherapy, at respondent's own expense, until further notice from the Board.
18 Respondent shall have the treating psychotherapist or psychiatrist submit written quarterly
19 reports to the Board as directed. If respondent is determined to be unable to practice safely,
20 upon notification, respondent shall immediately cease practice and shall not resume practice
21 until notified by the Board.

22 O. PSYCHOTHERAPY

23 Within thirty (30) days of the effective date of this Decision, respondent shall
24 submit to the Board, for its prior approval, the name and qualifications of a licensed mental
25 health practitioner of respondent's choice. Should respondent, for any reason, cease treatment
26 with the approved licensed mental health practitioner, respondent shall notify the Board
27 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement

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1 psychotherapist or licensed mental health practitioner of respondent's choice to the Board for its
2 prior approval.

3 Therapy shall be at least once a week unless otherwise determined by the Board.
4 Respondent shall provide the therapist with a copy of the Board's Accusation and Decision no
5 later than the first therapy session. Respondent shall take all necessary steps to ensure that the
6 treating therapist submits written quarterly reports to the Board concerning respondent's fitness
7 to practice, progress in treatment, and to provide such other information as may be required by
8 the Board. If the treating therapist finds that respondent cannot practice safely or independently,
9 the therapist shall notify the Board immediately by telephone and follow up by written letter
10 within three (3) working days.

11 Upon approval of the licensed mental health practitioner, respondent shall
12 undergo and continue treatment with that therapist and at respondent's own expense, until the
13 Board deems that no further psychotherapy is necessary. The Board may require respondent to
14 undergo a mental health evaluation(s) by a Board-appointed or Board-approved licensed mental
15 health practitioner.

16 P. MEDICAL EVALUATION

17 Within thirty (30) days of the effective date of this Decision, and on a periodic
18 basis thereafter as may be required by the Board, respondent shall undergo a medical evaluation,
19 as respondent's own expense, by a Board-appointed or Board-approved physician who shall
20 furnish a medical report to the Board.

21 If respondent is required by the Board to undergo medical treatment, respondent
22 shall, within thirty (30) days of written notice from the Board, submit to the Board for its prior
23 approval, the name and qualifications of a physician of respondent's choice. Upon Board
24 approval of the treating physician, respondent shall undergo and continue medical treatment
25 with that physician and a respondent's own expense, until further notice from the Board.
26 Respondent shall have the treating physician submit written quarterly reports to the Board.
27 Should respondent, for any reason, cease treatment with the approved physician, respondent

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1 shall notify the Board immediately and, within thirty (30) days of ceasing treatment, submit the
2 name of a replacement physician of respondent's choice to the Board for its prior approval.

3 Q. REHABILITATION PROGRAM -
4 PHARMACISTS RECOVERY PROGRAM (PRP)

5 Within thirty (30) days of the effective date of this Decision, respondent shall
6 contact the Pharmacists Recovery Program (PRP) for evaluation and shall successfully
7 participate in and complete the treatment contract and any subsequent addendums as
8 recommended and provided by the PRP and as approved by the Board. The costs for PRP
9 participation shall be borne by respondent.

10 If respondent is currently enrolled in the PRP, the participation is now mandatory
11 and is no longer considered a self-referral under Business & Professions Code § 4363, as of the
12 effective date of this Decision. Respondent shall successfully participate in and complete her
13 current contract and any subsequent addendum with the PRP. Probation shall be automatically
14 extended until respondent successfully completes her treatment contract. Any person terminated
15 from the program shall be automatically suspended upon notice by the Board. Respondent may
16 not resume the practice of pharmacy until notified by the Board in writing. The Board shall
17 retain jurisdiction to institute action to terminate probation for any violation of this term.

18 R. RANDOM DRUG SCREENING

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

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S. ABSTAIN FROM DRUGS AND ALCOHOL USE

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of respondent.

T. SUPERVISED PRACTICE

Respondent shall practice only under the supervision of a pharmacist not on probation with the Board. Respondent shall not practice until the supervisor is approved by the Board. The supervision shall be, as required by the Board, either:

- Continuous - 75% to 100% of a work week
- Substantial - At least 50% of a work week
- Partial - At least 25% of a work week
- Daily Review - Supervisor's review of probationer's daily activities within 24 hours.

Within thirty (30) days of the effective date of this Decision, respondent shall have her supervisor submit notification to the Board in writing stating the supervisor has read the Decision in Case No. 2459 and is familiar with the level of supervision as determined by the Board.

If respondent changes employment, respondent shall have her new supervisor, within fifteen (15) days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the Decision in Case No. 2459 and are familiar with the level of supervision as determined by the Board.

Within ten (10) days of leaving employment, respondent shall notify the Board in writing.

U. NO OWNERSHIP OF PREMISES

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell

1 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)
2 days following the effective date of this Decision and shall immediately thereafter provide
3 written proof thereof to the Board.

4 2. VIOLETION OF PROBATION

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

11 If respondent has not complied with any term or condition of probation, the
12 Board shall have continuing jurisdiction over respondent, and probation shall automatically be
13 extended until all terms and conditions have been met or the Board has taken other action as
14 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
15 probation, and to impose the penalty which was stayed (revocation).

16 3. COMPLETION OF PROBATION

17 Upon successful completion of probation, respondent's license will be
18 fully restored.

19
20 DATED: *February 5, 2003*
~~December, 2002~~

21 BILL LOCKYER, Attorney General
22 of the State of California

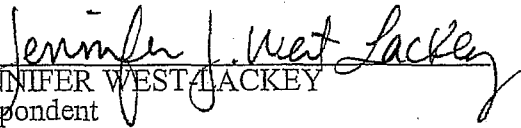
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24 *Diana Woodward Hagle*
25 DIANA WOODWARD HAGLE
26 Attorneys for Complainant
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I hereby state that I have read this Stipulation and Decision and Order in its entirety, that I understand the allegations of the Accusation and the legal significance and consequences of signing this Stipulation, that I fully understand all of it, and agree to be bound by the terms of this document. I have consulted with my attorney regarding all aspects of this matter.


I further understand that the Decision and Order, if adopted by the California Board of Pharmacy, will result in my license being placed on probation and that the Decision and Order is a record of discipline and shall be reported as such. I agree to all the terms and conditions contained herein.

DATED: December 9, 2002.


JENNIFER WEST-LACKEY
Respondent

DATED: December 30, 2002

NOSSAMAN, GUTHNER, KNOX & ELLIOTT,
LLP

By 
TIMOTHY J. ASPINWALL, Esquire
Attorneys for Respondent Jennifer West-Lackey

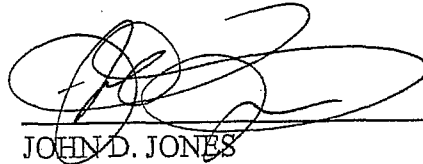
DECISION AND ORDER

The above Stipulation has been adopted and shall become the Decision of the Board of Pharmacy of the State of California effective May 2, 2003.

IT IS SO ORDERED this 3rd day of April, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

03583-110
SA2001AD1700
12/08/2002

"EXHIBIT"

1 BILL LOCKYER, Attorney General
of the State of California
2 STEVEN M. KAHN (State Bar #53846)
Deputy Attorney General
3 1300 I Street, Suite 125
Post Office Box 944255
4 Sacramento, California 94244-2550
Telephone: (916) 324-5338
5 Facsimile: (916) 324-5567

6 **Attorneys for Complainant**

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

11
12 In the Matter of the Accusation Against:) Case No. 2459
13 JENNIFER WEST-LACKEY)
13 131 Cohn Valley Way) **ACCUSATION**
14 Folsom, California 95630)
15 Original Pharmacist License No.)
15 RPH41647)
16 Respondent.)
17

18 Patricia F. Harris, the complainant herein, alleges as follows:

19 1. She is the Executive Officer of the Board of Pharmacy of the State of
20 California, (hereinafter "Board") and makes and files this accusation in her official capacity as
21 such and not otherwise.

22 2. On or about April 23, 1988, the Board issued original pharmacist license
23 number RPH 41647 to respondent Jennifer West-Lackey (hereinafter "respondent") to practice
24 pharmacy under the laws of the State of California. At all times pertinent herein, the license has
25 been in full force and effect.

26 3. Section 4301 of the Business and Professions Code (hereinafter "Code")
27 provides, in pertinent part, that the Board shall take action against any holder of a license who is
28 guilty of unprofessional conduct.

1 4. Section 4301 of the Code provides, in pertinent part, that unprofessional
2 conduct shall include the following:

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

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

11 “(j) The violation of any of the statues of this state or of the United States
12 regulating controlled substances and dangerous drugs.”

13 “(o) Violating or attempting to violate, directly or indirectly, or assisting in
14 or abetting the violation of or conspiring to violate any provision or term of this chapter or of the
15 applicable federal and state laws and regulations governing pharmacy, including regulations
16 established by the board.”

17 5. Section 4059(a) of the Code provides that no person shall furnish any
18 dangerous drug except on the prescription of a physician, dentist, podiatrist or veterinarian.

19 6. Section 4060 of the Code provides that no person shall possess any
20 controlled substance, except that furnished to a person upon the prescription of a physician,
21 dentist, podiatrist, or veterinarian.

22 7. Health and Safety Code section 11170 provides that no person shall
23 prescribe, administer or furnish a controlled substance for himself.

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1 8. Health and Safety Code section 11377 provides, in pertinent part, that
2 except as authorized by law or otherwise provided, possession of a controlled substance unless
3 upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
4 California is unlawful.

5 9. Section 11158(a) of the Health and Safety Code provides that except as
6 provided in Section 11159 or otherwise in the section, no controlled substance classified in
7 Schedule II shall be dispensed without a prescription meeting the requirements of that chapter.

8 10. At all times herein mentioned, Ritalin, a brand name for methylphenidate,
9 and methylphenidate were Schedule II controlled substances within the meaning of the Health and
10 Safety Code and dangerous drugs as defined in Business and Professions Code section 4022.

11 11. At all times herein mentioned, Xanax, a brand name for alprazolam, and
12 alprazolam were Schedule IV controlled substances within the meaning of the Health and Safety
13 Code and dangerous drugs within the meaning of Business and Professions Code section 4022.

14 12. Respondent is subject to disciplinary action pursuant to section 4301 of the
15 Code in that she is guilty of unprofessional conduct within the meaning of section 4301(f) in that
16 she has committed acts involving moral turpitude, dishonesty, fraud and deceit as more
17 particularly alleged hereinafter:

18 A. From on or about March 2000, to on or about May 12, 2000,
19 respondent was employed as a pharmacist at the Wal-Mart Pharmacy, Folsom, California.

20 B. During that period, respondent, while working at the pharmacy, on
21 numerous occasions stole from the pharmacy Ritalin, methylphenidate, Xanax, and alprazolam.
22 Respondent stole approximately 100 Xanax or its generic equivalent and approximately 150 to 200
23 Ritalin or its generic equivalent.

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1 13. Respondent is subject to disciplinary action pursuant to section 4301 of the
2 Code in that she is guilty of unprofessional conduct within the meaning of section 4301(o) of the
3 Code in conjunction with sections 4059(a) and 4060 of the Code and section 4301(j) of the Code
4 in conjunction with Health and Safety Code sections 11158(a), 11170 and 11377 as more
5 particularly alleged hereinafter:

6 A. Paragraph 12A hereinabove is incorporated herein by reference as
7 though fully set forth at this point.

8 B. On or about May 12, 2000, respondent furnished and dispensed to
9 herself and had in her possession, approximately 5 methylphenidate and approximately 21 Xanax
10 or its generic equivalent, without having a prescription of a physician, dentist, podiatrist or
11 veterinarian for these drugs.

12 C. During the period from on or about March 2000 to on or about May
13 12, 2000, respondent furnished and dispensed to herself approximately 100 Xanax or its generic
14 equivalent and approximately 150 to 200 Ritalin or its generic equivalent without having a
15 prescription of a physician, dentist, podiatrist or veterinarian for these drugs.

16 14. Respondent is subject to disciplinary action pursuant to section 4301 of the
17 Code in that she is guilty of unprofessional conduct in violation of section 4301(h) of the Code as
18 more particularly alleged hereinafter:

19 A. On or about May 12, 2000, respondent, while employed as a
20 pharmacist at the Wal-Mart Pharmacy administered to herself Ritalin, Xanax or their generic
21 equivalents, to the extent to be dangerous to herself or to the extent that her use impaired her
22 ability to conduct with safety to the public, the practice of pharmacy.

23 15. Section 125.3 of the Code, provides, in pertinent part, that the Board may
24 request the administrative law judge to direct the licensee found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case.

27 16. Notice is hereby given to respondent that pursuant to the provisions of
28 section 125.3 of the Code, the Board seeks the costs of its investigation and enforcement in this

1 WHEREFORE, complainant prays that the Board hold a hearing on the matters
2 alleged herein and following the hearing issue a decision:

- 3 1. Revoking or suspending original pharmacist license number RPH
4 41647 issued to respondent Jennifer West-Lackey;
- 5 2. Ordering respondent Jennifer West-Lackey to pay to the Board its
6 costs of investigation and enforcement of the case according to proof at the hearing, pursuant to
7 Business and Professions Code section 125.3; and
- 8 3. Taking such other and further action as the Board deems necessary
9 and proper.

10 Dated: 3/25/02

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

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1 BILL LOCKYER, Attorney General
of the State of California
2 LORRIE M. YOST, State Bar No. 119088
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 445-2271
Facsimile: (916) 327-8643

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 Petition to Revoke Probation
Against:
12 JENNIFER WEST-LACKEY
13 131 Cohn Valley Way
Folsom, CA 95630
14 Original Pharmacist No. RPH 41647
15
16 Respondent.

Case No. 2867

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

17 FINDINGS OF FACT

- 18 1. On or about July 5, 2005, Complainant Patricia F. Harris, in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
20 filed Petition to Revoke Probation No. 2867 against Jennifer West-Lackey (Respondent) before
21 the Board of Pharmacy.
- 22 2. On or about April 23, 1988, the Board of Pharmacy (Board) issued
23 Original Pharmacist No. RPH 41647 to Respondent. The Original Pharmacist was in full force
24 and effect at all times relevant to the charges brought herein and will expire on February 28,
25 2006, unless renewed.
- 26 3. On or about July 8, 2005, Jessica L. Taylor, an employee of the
27 Department of Justice, served by Certified Mail a copy of the Petition to Revoke Probation No.
28 2867, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
2 which was and is 131 Cohn Valley Way, Folsom, CA 95630. A copy of the Petition to Revoke
3 Probation, the related documents, and Declaration of Service are attached as Exhibit A, and are
4 incorporated herein by reference.

5 4. Service of the Petition to Revoke Probation was effective as a matter of
6 law under the provisions of Government Code section 11505, subdivision (c).

7 5. On or about July 25, 2005, a green Domestic Return Receipt card, Article
8 number 7160 3901 9848 9138 8281, signed by "Jennifer Lackey" was received by the Office of
9 the Attorney General. A copy of the postal returned documents are attached hereto as Exhibit B,
10 and are incorporated herein by reference.

11 6. Government Code section 11506 states, in pertinent part:

12 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
14 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
15 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

16 7. Respondent failed to file a Notice of Defense within 15 days after service
17 upon her of the Petition to Revoke Probation, and therefore waived her right to a hearing on the
18 merits of Petition to Revoke Probation No. 2867.

19 8. California Government Code section 11520 states, in pertinent part:

20 "(a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions or
22 upon other evidence and affidavits may be used as evidence without any notice to
23 respondent."

24 9. Pursuant to its authority under Government Code section 11520, the Board
25 finds Respondent is in default. The Board will take action without further hearing and, based on
26 Respondent's express admissions by way of default and the evidence before it, contained in
27 exhibits A, B and C, finds that the allegations in Petition to Revoke Probation No. 2867 are true.

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1 d. On or about February 15, 2005, Respondent violated Condition
2 1(Q) of her probation by failing to successfully participate in and complete her treatment
3 contract in that the Maximus Diversion Program (MDP) terminated Respondent from the
4 Pharmacists Recovery Program (PRP).

5 e. On or about November 29, 2004, Respondent violated Condition
6 1(R) of her probation in that she failed to submit to a random body fluid test.

7 f. During the month of July 2004, Respondent violated Condition
8 1(S) of her probation in that she failed to completely abstain from the possession or use of
9 alcohol.

10 ORDER

11 IT IS SO ORDERED that Original Pharmacist No. RPH 41647, heretofore issued
12 to Respondent Jennifer West-Lackey, is revoked.

13 Pursuant to Government Code section 11520, subdivision (c), Respondent may
14 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
15 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
16 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
17 statute.

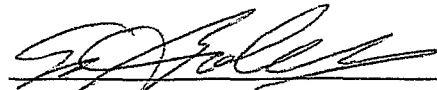
18 This Decision shall become effective on December 23, 2005.

19 It is so ORDERED November 23, 2005

20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

23 West-Lackey.def.dec.10198374.wpd
24 DOJ docket number:SA2005102405

25 By


26 STANLEY W. GOLDENBERG
27 Board President

28 Attachments:

- 26 Exhibit A: Petition to Revoke Probation No.2867, Related Documents, and Declaration of
27 Service
28 Exhibit B: Domestic Return Receipt # 7160 3901 9848 9138 8281
Exhibit C: Certification of Costs

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of the State of California
2 LORRIE M. YOST, State Bar No. 119088
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6 Attorneys for Complainant
7
8

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

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 2867

13 **JENNIFER JEAN WEST-LACKEY**
14 131 Cohn Valley Way
Folsom, CA 95630

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 Pharmacist License No. RPH 41647

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Patricia F. Harris ("Complainant") brings this Accusation and Petition to
21 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
22 Pharmacy ("Board"), Department of Consumer Affairs.

23 2. On or about April 23, 1988, the Board issued Pharmacist License Number
24 RPH 41647 to Jennifer Jean West-Lackey ("Respondent"). On April 3, 2003, pursuant to the
25 Stipulation, Decision and Order adopted by the Board as its Decision in the disciplinary action
26 titled *In the Matter of the Accusation Against: Jennifer West-Lackey, etc.*, Case Number 2459,
27 the Board ordered that Respondent's pharmacist license be revoked effective May 2, 2003. The
28 revocation was stayed and Respondent was placed on probation for five (5) years on terms and

1 conditions, as more particularly set forth in paragraphs 11 through 23 below. Respondent's
2 pharmacist license will expire on February 28, 2006, unless renewed.

3 **STATUTORY PROVISIONS**

4 3. Business and Professions Code ("Code") section 4300 states, in pertinent
5 part:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

15 4. Code section 118, subdivision (b), states:

16 The suspension, expiration, or forfeiture by operation of law of a license
17 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
18 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
19 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
20 otherwise taking disciplinary action against the licensee on any such ground.

21 5. Code section 4301 states, in pertinent part:

22 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
23 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
is not limited to, any of the following:
24

25

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

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

7 **Cost Recovery**

8 6. Code section 125.3 states, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations
10 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **ACCUSATION**

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Using Alcoholic Beverages in a Dangerous or Injurious Manner)**

15 7. Respondent is subject to disciplinary action pursuant to Code section
16 4301, subdivision (h), on the grounds of unprofessional conduct, in that she used alcoholic
17 beverages to an extent or in a manner dangerous or injurious to herself, other persons, and/or the
18 public as follows:

19 Respondent, by her own admission, drank alcohol 3 to 4 times per week for at
20 least one (1) month before testing positive on July 30, 2004, for ethylglucuronide (alcohol)
21 during a urine toxicology screening. Respondent admitted that she would drink when she was
22 alone and when her husband was away on business and that she would drink an entire magnum
23 of wine at a time to the point where she would "pass out."

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

26 8. Respondent is subject to disciplinary action pursuant to Code section
27 4301, subdivision (f), on the grounds of unprofessional conduct, in that during her participation
28 in the Pharmacists Recovery Program (PRP), ordered by the Board as a part of her probation, she
committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as follows:

///

1 a. During a mental health examination on August 11, 2004 designed to
2 determine Respondent's fitness to practice, Respondent denied that she had been using alcohol
3 prior to the urine toxicology screening of July 30, 2004. In fact, Respondent had been drinking
4 alcohol 3 to 4 times per week for approximately one (1) month prior to the toxicology screening
5 and drank an entire magnum of wine on each occasion, to the point where she would "pass out",
6 as set forth in paragraph 7 above. Respondent's dishonesty rendered the assessment invalid.

7 b. During Respondent's participation in the PRP health support group,
8 Respondent told lies to the group, including about her sobriety date, rendering the group process
9 ineffective and the progress reports from the group's leader inaccurate.

10 c. Respondent admitted that she had falsely documented attendance at
11 various recovery groups.

12 **PETITION TO REVOKE PROBATION**

13 9. Complainant realleges and incorporates herein by reference as if fully set
14 forth the allegations contained in paragraphs 1 through 8 of the Accusation.

15 10. Condition 2 of Respondent's probation states, in pertinent part, that if
16 Respondent violates probation in any respect, the Board, after giving Respondent notice and an
17 opportunity to be heard, may revoke probation and carry out the disciplinary order which was
18 stayed (revocation).

19 11. On May 20, 2003, Respondent signed a Declaration acknowledging that
20 she thoroughly understood the terms and conditions of her probation as set forth in the
21 disciplinary action (Stipulation, Decision and Order), and that failure to comply may result in
22 further disciplinary action.

23 12. Grounds exist to revoke Respondent's probation and reimpose the order of
24 revocation of her pharmacist license in that she has violated the terms and conditions of her
25 probation, as follows:

26 ///

27 ///

28 ///

1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Failure to Obey all State Laws)**

3 13. Condition 1(A) of Respondent's probation states, in pertinent part, that
4 Respondent shall obey all federal and state laws and regulations substantially related to or
5 governing the practice of pharmacy.

6 14. Respondent's probation is subject to revocation in that she failed to obey
7 all state laws substantially related to or governing the practice of pharmacy, by and through her
8 violations of Code section 4301, subdivisions (f) and (h), as set forth in paragraphs 7 through 8
9 above.

10 **SECOND CAUSE TO REVOKE PROBATION**

11 **(Failure to Successfully Participate in and**

12 **Complete Pharmacists Recovery Program)**

13 15. Condition 1(Q) of Respondent's probation states, in pertinent part, that
14 Respondent shall successfully participate in and complete the Pharmacists Recovery Program
15 ("PRP") for evaluation and treatment.

16 16. Respondent's probation is subject to revocation in that she failed to
17 successfully participate in and complete the treatment contract with PRP. On February 15, 2005,
18 the Maximus Diversion Program (MDP) terminated Respondent from the PRP. Respondent was
19 terminated for failing to comply with the terms and conditions of her recovery contract in the
20 following respects:

21 a. Respondent tested positive for ethylglucuronide (alcohol) on July 30,
22 2004, during a urine toxicology screening.

23 b. Respondent failed to submit to a random body fluid test on November 29,
24 2004, as required by her recovery contract with (MDP).

25 c. Respondent was in non-compliance with her recovery contract in that she
26 was terminated from the Kaiser CDRP outpatient program because she failed to attend three
27 scheduled individual therapy sessions.

28 ///

1 d. Respondent rendered her mental health exam/reassessment on August 11,
2 2004 invalid by lying to her doctor about her sobriety date, her treatment progress and the scope
3 and pattern of her substance use/abuse. Respondent failed to appropriately engage in the
4 reassessment process thereby rendering the assessment invalid.

5 e. Respondent continually misrepresented her sobriety date and failed to
6 engage in the therapeutic process during the health support group meetings facilitated by Craig
7 Johnson.

8 f. Respondent failed to submit her 12-step attendance cards on time for the
9 months of November 2004, March 2004, and April 2004.

10 g. Respondent failed to attend individual therapy as requested by the PRP on
11 January 6, 2005.

12 **THIRD CAUSE TO REVOKE PROBATION**

13 **(Failure to Participate in Random Drug Screening)**

14 17. Condition 1(R) of Respondent's probation states, in pertinent part, that
15 Respondent shall participate in random testing, including, but not limited to, biological fluid
16 testing (e.g., urine, blood), Breathalyzer, hair follicle testing, or a drug screening program
17 approved by the Board. At all times Respondent shall fully cooperate with the Board, and shall,
18 when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics,
19 dangerous drugs or other controlled substances.

20 18. Respondent's probation is subject to revocation in that she failed to submit
21 to a random body fluid test on November 29, 2004, as required by her recovery contract with
22 PRP, as set forth in paragraph 16(b) above.

23 **FOURTH CAUSE TO REVOKE PROBATION**

24 **(Failure to Abstain from Alcohol Use)**

25 19. Condition 1(S) of Respondent's probation states, in pertinent part, that
26 Respondent shall completely abstain from the possession or use of alcohol.

27 20. Respondent's probation is subject to revocation in that she failed to
28 completely abstain from the use of alcohol, as set forth in paragraphs 7, 8, and 18 above.


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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 Pharmacist License Number RPH 41647, issued to Jennifer Jean West-Lackey;
2. Revoking probation and reimposing the order of revocation of Pharmacist License Number RPH 41647, issued to Jennifer Jean West-Lackey;
3. Ordering Jennifer Jean West-Lackey 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;
4. Taking such other and further action as deemed necessary and proper.

DATED: 7/5/05



PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant