

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

In the Matter of the Accusation Against:

PAUL F. WEBB, JR
1710 F. Street, #1
Sacramento, CA 95814

Pharmacy Technician No. TCH 53679

Respondent.

Case No. 3647

OAH No. 2010071105

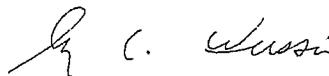
DECISION

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 May 11, 2011.

It is so ORDERED April 11, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PAUL F. WEBB JR.,

Pharmacy Technician Registration
No. TCH 53679

Respondent.

Case No. 3647

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PROPOSED DECISION

Deidre L. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 10, 2011, in Sacramento, California.

Kent D. Harris, Deputy Attorney General, represented complainant Virginia Herold (complainant), the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Respondent Paul F. Webb Jr. (respondent) was not present or represented at the hearing.

During the hearing, oral and documentary evidence was received. On January 10, 2011, the matter was submitted.

FACTUAL FINDINGS

Due Process Service

1. On May 6, 2010, complainant signed the Accusation regarding respondent in her official capacity. The Accusation and other required documents were served on respondent at his address of record in Sacramento, California, on May 10, 2010, by both certified and first class mail as provided by law. On June 2, 2010, the Board received respondent's Notice of Defense, in which he requested a hearing.

2. On August 27, 2010, the Board filed and served a Notice of Hearing that set this matter for an administrative hearing on January 10, 2011. The Notice of Hearing contained the information required under section 11509 of the Government Code

(Administrative Procedure Act [APA]), including notice of his hearing rights and the process by which to request a continuance. The Notice of Hearing was duly served on respondent by both certified and first class mail at his address of record as set forth on his Notice of Defense.

3. The Board did not receive any further verbal or written communication from respondent prior to hearing. Since service was properly made upon respondent, this matter proceeded as a default hearing pursuant to section 11520 of the APA.

Registration

4. On December 29, 2003, the Board issued to respondent Pharmacy Technician Registration No. TCH 53679, which authorized him to act as a pharmacy technician in California. Respondent's pharmacy technician registration will expire on January 31, 2012, unless suspended or revoked.

5. The pharmacy technician registration is the equivalent of a state license. The evidence established that the Board issues a registration to pharmacy technician applicants who have a high school education, meet minimal training requirements, and obtain a criminal conviction fingerprint clearance. No examination is required for the issuance of a pharmacy technician registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a registered pharmacist.

Arrest and Criminal Conviction

6. At about 11:30 p.m. on September 24, 2008, uniformed Sacramento police officers Dan Wiseman and J. Schwartz arrested respondent following an investigation of respondent's presence in his vehicle, which was parked in the parking lot of Goldie's Adult Store in Sacramento. During a consent search, the police officers found open containers of alcohol (beer) and a large ziplock bag containing over 168 grams of concentrated marijuana. Officer Schwartz reported that, after reading respondent his legal rights, respondent admitted the marijuana was his, that he did not possess a medical permit to possess marijuana, and that he planned to give it to someone to repay a debt. Respondent also admitted having consumed alcohol while waiting in the parking lot, and to having ingested a drug, Norco, an opiate. The officers administered a field sobriety test and determined that respondent was under the influence, with bloodshot eyes and the odor of an alcoholic beverage on his person. Respondent was arrested and transported to jail.

7. As a result of the above arrest, on October 9, 2008, in the Superior Court of California, County of Sacramento, in Case Number 08F07958, *People of the State of California v. Paul Francis Webb*, respondent pled nolo contendere to, and was convicted of violating section 11357, subdivision (a), of the California Health and Safety Code (unauthorized possession of concentrated cannabis), a misdemeanor. The court suspended the criminal proceedings and ordered respondent to enroll in a diversion program on standard terms and conditions for 18 to 36 months, and to pay administrative fees.

Disciplinary Guidelines

8. The Board has enacted comprehensive regulatory guidelines which are to be followed in all disciplinary actions.¹ The Board recognizes that individual cases may necessitate a departure from these guidelines; and in such cases, mitigating circumstances should be detailed. The Board's guidelines organize possible violations related to the qualifications, functions or duties of its licensees into four categories for purposes of evaluating the degree of penalty to be imposed. The guidelines provide that a criminal conviction involving dangerous drugs or controlled substances is a Category III violation that generally calls for either outright revocation of the license or revocation with a period of actual suspension and three to five years of probation ("five years of probation where self-administration or diversion of controlled substances is involved"). The guidelines set a policy of "no tolerance for licensees who traffic in drugs or who, in the absence of appropriate evidence of rehabilitation, personally abuse drugs or alcohol." (*Guidelines*, pg. 1.)

9. With regard to pharmacy technicians in particular, the guidelines state:²

The board files cases against pharmacy technicians where the violation(s) involve significant misconduct on the part of the licensee. The board believes that revocation is typically the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to the following violation(s) of law(s) involving:

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol . . .

10. The guidelines also provide that "revocation is generally an appropriate order where a respondent is in default, such as when he or she failed to file a notice of defense or fails to appear at a disciplinary hearing." (*Guidelines*, pg. 2.)

Rehabilitation

11. Respondent did not appear at the hearing and did not present any evidence of rehabilitation.

¹ California Code of Regulations, title 16, section 1760. In accordance with section 1760, the Board has developed and published a booklet entitled "*Disciplinary Guidelines: A Manual of Disciplinary Guidelines and Model Disciplinary Orders*," (Rev. 10/2007 (referred to as *Guidelines*)).

² *Guidelines*, pg. 43.

12. Respondent's conviction involved the personal possession of an illegal drug. Concentrated cannabis is a form of marijuana, a controlled substance. The underlying circumstances also involved respondent's personal consumption or use of alcohol and drugs in public.

13. Board Inspector Lin Hokana, who was a licensed pharmacist, persuasively testified at hearing that the Board does not have a program to monitor or supervise technicians who have been convicted of drug-related crimes. Pharmacy technicians have direct access to prescription drugs and substances and generally count and fill prescription bottles for licensed pharmacists. The Board is charged to protect the health, safety, and welfare of the public with integrity and honesty. (*Guidelines*, p. 1.) The evidence established that there is a high risk of harm to the public if a pharmacy technician abuses, diverts, or makes mistakes regarding the substances he or she prepares for consumers and patients.

14. As set forth in Legal Conclusions 1 through 13, respondent is subject to disciplinary action for unprofessional conduct based on his October 2008 conviction and his unprofessional conduct involving illegal possession of marijuana. Based on the Board's guidelines, the appropriate discipline is revocation of respondent's registration. No evidence was presented in mitigation, extenuation or rehabilitation to warrant any reduction in penalty.

Costs of Investigation and Enforcement

15. A certification of costs and declaration under penalty of perjury was signed by the Deputy Attorney General who prosecuted the action. It established that the Attorney General's Office billed 11.75 hours of attorney services at the rate of \$170 per hour from March 2010 to the date of the hearing. The time spent and the hourly rate were reasonable. Under the circumstances, it is determined that the Board is entitled to an order directing respondent to pay \$1,997.50 to reimburse the Board for its total costs of investigation and enforcement should respondent seek the renewal or reinstatement of his license.

LEGAL CONCLUSIONS

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

2. Government Code section 11520, subdivision (a) provides that, if a respondent either fails to file a notice of defense or to appear at the hearing, the Board may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without notice to respondent.

3. Business and Professions code section 4038 defines a "pharmacy technician" as "an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties as specified in section 4115."

4. Business and Professions Code section 4115 sets forth various tasks which a pharmacy technician may perform. For example, subdivision (a) provides "a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." The duties a pharmacy technician may perform are further subject to regulation.³

5. Business and Professions Code section 4300 generally requires the Board to discipline the license of anyone whose default has been taken, or who has been found guilty after a hearing.

6. Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

[¶]...[¶]

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

[¶]...[¶]

³ California Code of Regulations, title 16, section 1793.2 provides:

"Nondiscretionary tasks' as used in Business and Professions Code section 4115, include:

- (a) removing the drug or drugs from stock;
- (b) counting, pouring, or mixing pharmaceuticals;
- (c) placing the product into a container;
- (d) affixing the label or labels to the container;
- (e) packaging and repackaging."

(1) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee under this chapter. The record of conviction of a violation of . . . the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. . . .

7. Business and Professions Code section 4060 provides in part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

8. A professional license may be suspended or revoked only if the conduct upon which the discipline is based relates to the practice of the particular profession and thereby demonstrates a present unfitness to practice such profession. Whether this requirement tying the conduct to the fitness or competence to practice a profession is termed a “nexus” or a “relationship,” the inherent meaning is the same. There must be a logical connection between the licensee’s conduct and his or her present fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. (*Clare v. California State Board of Accountancy* (1992) 10 Cal.App.4th 294, 301-303.)

9. Based on Factual Findings 1 through 14, and Legal Conclusions 1 through 8, and 10, there is a clear substantial relationship between holding a pharmacy technician registration and the unlawful possession or use of controlled substances or dangerous drugs. Generally, persons who illegally possess or use such substances should not be permitted to hold employment which provides them with access to controlled substances because of the high risk of diversion, abuse, and mistake, and the high risk of harm caused to the public as a consequence thereof. The Board’s guidelines are consistent with this determination. Marijuana is a Schedule 1 Controlled Substance. (Health & Saf. Code, § 11054, sub. (D)(13).) Accordingly, respondent’s October 2008 conviction for possession of concentrated cannabis, a form of marijuana, is substantially related to the Board’s licensing concerns.

10. Based on Factual Findings 1 through 14, and Legal Conclusions 1 through 9, cause exists to revoke respondent’s registration a pharmacy technician as follows:

(a) Under Business and Professions Code section 4301, subdivision (i), for unprofessional conduct based on respondent’s conviction of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician;

(b) Under Business and Professions Code section 4301, subdivision (j) and (o), for unprofessional conduct based on respondent’s violation of California statutes regulating controlled substances and dangerous drugs; and based on respondent’s violation of provisions of the laws governing pharmacy; and

(c) Under Business and Professions Code section 4060, based on respondent's possess of a controlled substance in violation of that statute.

11. The primary purpose of this disciplinary proceeding is to protect the public. It is concluded, as recommended by complainant, that revocation of respondent's license is appropriate to protect the public. No evidence regarding mitigation, extenuation, or rehabilitation was presented to warrant a lesser result.

Recovery of Costs of Investigation and Prosecution

12. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case

[¶]...[¶]

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

13. Based on Factual Finding 15, and on Legal Conclusion 12, cause exists under Business and Professions Code section 125.3 to direct respondent to reimburse the Board its reasonable costs of investigation and enforcement in the total amount of \$1,997.50, in connection with any renewal or reinstatement of his license.

ORDER

Pharmacy Technician Registration No. TCH 53679 issued to respondent PAUL F. WEBB JR. is revoked

DATED: February 4, 2011


DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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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. 3647

12 **PAUL F. WEBB JR.**
1710 F Street, #1
13 **Sacramento, California 95814**

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
15 **TCH 53679**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about December 29, 2003, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 53679 to Paul F. Webb Jr. (Respondent). The license was in full force
23 and effect at all times mentioned herein and will expire on January 31, 2012, unless renewed.

24 **JURISDICTION**

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

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

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

....

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

5. Section 4301 of the Code 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:

...

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

...

"(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

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

16 ...
17 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
18 violation of or conspiring to violate any provision or term of this chapter or of the applicable
19 federal and state laws and regulations governing pharmacy, including regulations established by
20 the board or by any other state or federal regulatory agency.

21 ...
22 6. Section 4060 of the Code states in pertinent part:
23 "No person shall possess any controlled substance, except that furnished to a person upon
24 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
25 doctor..."

26 7. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 CONTROLLED SUBSTANCES

4 8. **Marijuana** is a hallucinogenic and a Schedule I Controlled Substance pursuant to
5 Health & Safety Code section 11054(D)(13).

7 FIRST CAUSE FOR DISCIPLINE

8 (Criminal Conviction)

9 9. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4301(l) in that he has been convicted of the following crime that is substantially related to the
11 qualifications, functions, and duties of a pharmacy technician:

12 a. On October 9, 2008, in the Superior Court, Sacramento County, California in
13 the case entitled *People of the State of California v. Paul Francis Webb*, Case No. 08F07958,
14 Respondent was convicted by the court following his plea of Nolo Contendere to a violation of
15 Health & Safety Code section 11357(a)(unauthorized possession of concentrated cannabis) a
16 misdemeanor. The circumstances are as follows: On September 24, 2008, respondent was
17 observed parked in the parking lot of Goldies adult store. During a consent search, a large
18 (8"x10") ziplock bag full of marijuana was located in his vehicle. Respondent stated that he
19 owed a friend some money and was going to use the marijuana to pay.

20 SECOND CAUSE FOR DISCIPLINE

21 (Unlawful Possession of Controlled Substance)

22 10. Respondent is subject to disciplinary action for unprofessional conduct under section
23 4060 in that he illegally possessed marijuana as set forth in paragraph 9(a) above.

24 THIRD CAUSE FOR DISCIPLINE

25 (Violation of Laws)

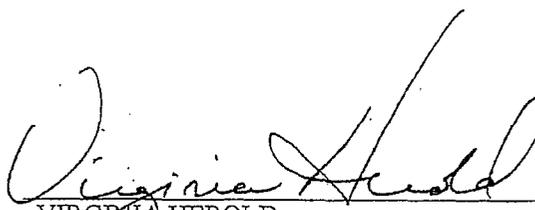
26 11. Respondent is subject to disciplinary action for unprofessional conduct under sections
27 4301(j) and (o) by and through his violations of section 4060 and Health and Safety Code section
28 11357(a) in that he illegally possessed marijuana as set forth in paragraph 9(a) above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 53679, issued to Paul F. Webb Jr.
2. Ordering Paul F. Webb Jr. 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: 6/5/10



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

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accusation.rtf