

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

In the Matter of the Accusation Against:

Case No. 4107

STEPHEN F. LEE

1512 California Street, #3
San Francisco, CA 94109

OAH No. 2013010620

Pharmacist License No. RPH 48797

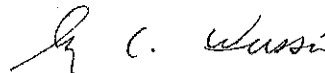
Respondent.

ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective October 1, 2013. NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied. The Board of Pharmacy's Decision and Order initially effective August 22, 2013 and thereafter stayed to September 22, 2013 and further stayed to October 2, 2013 is the Board of Pharmacy's final decision in this matter.

Date: October 1, 2013

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against:

STEPHEN F. LEE

1512 California Street, #3
San Francisco, CA 94109

Pharmacist License No. RPH 48797

Respondents.

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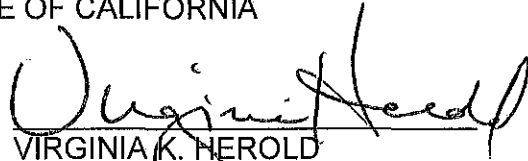
STAY OF EFFECTIVE DATE

Respondents filed a Petition for Reconsideration in the above-entitled matter on September 17, 2013. In accordance with the provisions of Section 11521 of the Government Code, and for the sole purpose of considering the Petition for Reconsideration, the effective date of the Decision is hereby stayed until October 2, 2013.

IT IS SO ORDERED this 20th day of September, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



VIRGINIA K. HEROLD
Executive Officer

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

In the Matter of the Accusation Against:

STEPHEN F. LEE,

Pharmacist License No. RPH 48797

Respondent.

Case No. 4107

OAH No. 2013010620

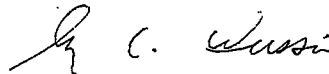
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the case number appearing on page 1, is hereby modified as Case No. 4107.

This decision shall become effective on August 22, 2013.

IT IS SO ORDERED this 23rd day of July, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against:

STEPHEN F. LEE,

Pharmacist License No. RPH 48797

Respondent.

Case No. 4017

OAH No. 2013010620

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on April 11, 2013.

Joshua A. Room, Supervising Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs.

Respondent Stephen F. Lee was present and represented himself.

The matter was submitted for decision on April 11, 2013.

FACTUAL FINDINGS

1. Complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, issued the accusation in her official capacity.

2. Respondent Stephen F. Lee received his pharmacy degree from the University of the Pacific in 1996. The Board of Pharmacy issued Pharmacist License No. RPH 48797 to respondent on August 13, 1996. No prior disciplinary action has been taken against respondent.

3. Respondent was employed as a staff pharmacist at Costco Pharmacy (#144) in San Francisco. As a licensed pharmacist respondent had access to controlled substances and dangerous drugs, including Vicodin.

4. During an August and September 2010 investigation of another Costco employee, Costco manager Michael Rieke received information alleging that respondent had provided Vicodin to employee "T.B." (T.B.'s name appears in documents in evidence, but the parties agreed to refer to him by his initials.) T.B. was a Costco loss prevention employee.

5. Manager Rieke interviewed respondent on September 9, 2010, and thereafter wrote and signed a report of the interview. Present as a witness was Costco tire shop manager Rich Cross. Rieke asked respondent about his relationship with T.B. Respondent said they were friends but just in the store, and that they did not socialize outside of work. Respondent showed Rieke some text messages in which T.B. asked for medications and respondent replied "your medication is ready." Respondent acknowledged that he had "advanced" Vicodin to T.B. on seven or eight occasions. Respondent further acknowledged that he sometimes advanced 10 or 20 pills at a time. Respondent told Rieke that he thought T.B. was an addict and acknowledged that a pharmacist is "not supposed to continue giving tablets to an addict." Rieke also reported:

I asked [respondent] to give us anymore information related to Vicodin and [T.B.]. [Respondent] said that while his girlfriend was sick with cancer (she passed away early this year). He sold her tablets to [T.B.] two or three times for about \$200 each time. He said that she needed the money to pay for her cancer treatment. Later I asked him how many pills he estimated were in each transaction and he guessed about 120. I asked him where the transaction took place and he said on the third level of the Costco garage. I asked if he was working at the time and he said no. I asked him if [T.B.] was working and [respondent] said he thought he was.

Rieke asked respondent to provide a written statement. Respondent preferred to type his statement, so Rieke had respondent use a computer in a quiet corner of the office. Respondent provided and signed the following September 9, 2010, statement (spelling, punctuation, and grammar as in original):

[T.B.] and I have know each other for almost 2 years. He has told me about his life and medical history. He told me that he has a pinch nerves in spinal cord. Throughout the years, I tried to help him by telling him how to take care of his back. I even gave him a tens unit to help his back. Many times he tells me that he is in extreme pain and can't even get out of the bed. [T.B.] have multiple prescription from his doctor for Vicodin. Sometime when he is out of the medication and out of refill, I would advance 8 tablets of Vicodin. And then would subtract the 8 tablets from the next refill. I would also indicate in the Pharmasist software. If he has refills and if he is one or two

days early, I would advance a few tablets and subtract from the next refill. I did this for about 7-8 times for him.

I have already advance him 10 tablets already. On July 6, 2010, he text me "grab me 10 and don't forget to take out 20 when you fill mine tomorrow. Love you long time. Thanks man." After taking out 20 tablets, I text back you med is ready.

On August 30,2010, I ask him there is a rumor on people taking vicodin in the store. I told him that I am going to subtract 8 tablets from your next refill. I am not going to advance anymore.

[T.B.] have told me that he get medication from another pharmacy. He, however, did not tell me who and where he gets it from.

[T.B.] have paid some vicodin from my past-away girlfriend, who died from cancer. He pay about 200 hundred dollar on top floor of the parking lot. The amount was about 120 tablets for each time. (this is a guess). We did this twice. He was working on those days. The money is for my girlfriends medical bills.

Scott have help me with my parking ticket. On one day, my friend, Mike Tufo, have a parking ticket. I told him I know some could take care of your ticket. I call Scott if you could help my friend to take care of the ticket. Scott then ask me if I can get soma. I told him to come to Daniel's Pharmacy. Mike then gave me I believe 10 soma.

Respondent's conduct regarding the incident in the final paragraph (involving the parking ticket and Soma) was not alleged in the accusation.

6. Inspector Lin Hokana investigated this case for complainant and issued an April 12, 2011, investigation report. Hokana interviewed respondent on February 10, 2011. After reviewing his cell phone records, respondent acknowledged that he had advanced Vicodin to T.B. on February 3, May 15, July 5, and August 2, 2010. Respondent did so without a valid prescription or refill, and without T.B.'s prescriber's authorization.

7. In his meeting with Hokana, respondent also acknowledged receiving generic Vicodin tablets from his girlfriend in England and meeting T.B. on the top floor of the Costco parking lot to exchange the tablets for envelopes containing \$200 cash:

[Respondent] told me about his girlfriend, Linda Lam. She was in the restaurant business. They met when she lived in San

Francisco, but she moved to England. She developed cancer. She died in January 2010 from an embolism. Before this, she had a prescription for generic Vicodin but stopped taking it for unknown reasons. She did not know what to do with her generic Vicodin so she mailed 2 unlabeled bottles to [respondent] for him to get rid of. [Respondent] said he recognized the tablets as generic Vicodin. He did not count the contents of the 2 prescription bottles. He told me he thought there were about 100 tablets in each bottle.

In about June 2009 [T.B.] was in pain and Costco had not heard back from his prescriber about authorizing a refill of his Vicodin. [Respondent] felt sorry for [T.B.] so he gave him one bottle of his girlfriend's generic Vicodin. In about July 2009, he gave the second bottle to [T.B.]. After each event, [T.B.] gave [respondent] an envelope addressed to his girlfriend. The drugs and envelope were exchanged in the parking structure at Costco #144. [Respondent] did not look in the envelopes; he mailed them to his girlfriend thinking they were a "thank you" notes. His girlfriend told him each envelope contained \$200.00. [Respondent] told me he did not know there was money in the envelopes. His girlfriend kept the money to pay her medical bills.

Respondent furnished his girlfriend's generic Vicodin to T.B. without a valid prescription or refill, and without T.B.'s prescriber's authorization.

8. At their meeting on February 10, 2011, respondent provided to Hokana a signed statement under penalty of perjury that was essentially a verbatim copy of his September 9, 2010, statement to Costco manager Rieke.

9. Inspector Hokana's investigation report noted that he issued a notice of noncompliance to respondent on March 8, 2011. Thereafter, respondent provided a March 20, 2011, statement under penalty of perjury to Hokana (spelling as in original):

I would like to sincerely apologize for my bad judgment. Although my judgement was poor, but my intention was good. I was trying to help a fellow co-worker. I see him, like I see my girlfriend who was also suffer from extreme pain. I know that this is not an excuse for my poor judgement. But, I request and beg the board to kindly forgive my mistake and forgive me. I would like to reassure the board that I shall not repeat such bad judgement in the future. I truly regret what I have done.

10. At hearing, respondent explained that he wanted to alleviate T.B.'s pain and therefore "advanced" Vicodin to him out of "medical necessity." Respondent said T.B.'s prescribing doctor's office was slow to call back with prescription authorizations but that the prescriptions were eventually authorized. Respondent asserted that he kept notes on the Vicodin he advanced to T.B. on his cell phone and also in the Costco pharmacy's problem box. No such notes are in evidence. Respondent asserted that the notes in the problem box had been discarded.

Respondent provided Vicodin to T.B. out of a misguided sympathy for him. Although respondent acknowledged his "bad judgment" and "poor judgment" in advancing Vicodin to T.B., he also maintained that he acted appropriately.

11. Respondent acknowledged that the TENS unit he gave to T.B. is a prescription device and that T.B. did not have a prescription for a TENS unit.

12. Respondent also worked at Daniel's Pharmacy in San Francisco. Pharmacist Iyad I. Narrah of Daniel's Pharmacy wrote an April 9, 2013, letter of reference:

To Whom It May Concern:

I am writing this letter on behalf of Steve Lee. I have known Steve for almost 15 years and believe he is a wonderful individual and good friend. He has helped me at my pharmacy over the years and [sic] found him to be very efficient and proficient. Steve is knowledgeable in the practice of pharmacy and does his profession honorably.

We have had numerous inventories done here for internal audits and found everything as it should be, including scheduled medications.

Steve is someone I rely on and can depend on when I need him.

Narrah's letter made no reference to the conduct of which respondent is charged in the accusation.

13. Respondent provided no other letters of reference and called no witnesses other than himself.

14. Complainant incurred a reasonable cost of \$7,584 for the investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. The evidence established that on two occasions in June and July 2009, respondent engaged in transactions in which he furnished to T.B. generic Vicodin tablets that he had received from his girlfriend. On each occasion, respondent furnished approximately 100 to 120 tablets of generic Vicodin to T.B. in exchange for an envelope containing \$200 cash.

Respondent testified that he did not know that the pills he received from his girlfriend were Vicodin. He testified that he knew that they were pain medications, but that he did not know what kind. He testified that he did not know T.B.'s envelopes contained cash.

Respondent's testimony was not persuasive and is at odds with the account he gave to Inspector Hokana on February 10, 2011; according to Hokana's report, respondent said he recognized his girlfriend's medication as tablets of generic Vicodin. Additionally, neither respondent's September 9, 2010, nor his February 10, 2011, signed statements asserted that he did not know the pills he provided to T.B. on the top floor of the Costco parking lot were Vicodin or that he did not know the envelopes contained cash.

Even were it true that respondent did not know the pills were Vicodin, respondent as a licensed pharmacist then would have provided an unknown pain medication to T.B.

2. The evidence further established that respondent on at least four occasions from February to August 2010 furnished numerous tablets of Vicodin to T.B. without a valid prescription or refill, or without T.B.'s prescriber's authorization. Respondent maintained that he "advanced" the Vicodin out of "medical necessity" in light of T.B.'s pain. But respondent did not show that on these occasions he contacted the prescriber or complied with the emergency refill requirements in Business and Professions Code section 4064 or Health and Safety Code section 11201. Notably, section 11201 requires that the pharmacist keep records of the emergency refill, and must make every reasonable effort to contact the prescriber. Moreover, respondent considered T.B. to be addicted and knew that a pharmacist should not continue to furnish drugs to an addicted individual.

3. As set forth in the Factual Findings and Legal Conclusions 1 and 2, respondent on multiple occasions furnished Vicodin or generic Vicodin, a dangerous drug, to T.B. without a valid prescription.

Respondent is subject to discipline under Business and Professions Code sections 4060 (possession of controlled substance without prescription), 4059 (furnish dangerous drug without prescription), 4063 (unauthorized refill of dangerous drug), 4064 (emergency refill requirements), and 4301 (unprofessional conduct), including subdivisions (f) (acts involving moral turpitude, dishonesty, etc.), (j) (violation of statutes regulating controlled substances), (o) (furnishing dangerous drug in violation of pharmacy law).

4. The accusation alleged that respondent is subject to discipline under Health and Safety Code sections 11351 (possession for sale or purchase for sale of controlled substance) and 11352 (transportation, importation, furnishing of controlled substance). These sections are criminal statutes for which the penalty for violation is imprisonment for two, three, or four years (section 11351) or three to nine years (section 11352). This proceeding is not the proper forum for adjudication of criminal matters. The evidence did not show that respondent was convicted of violating sections 11351 or 11352 in a criminal court proceeding.

5. Respondent's conduct is not peripherally related to his responsibilities as a pharmacist. To the contrary, it goes to the core of his role in the prescriber-pharmacist-patient relationship. He furnished dangerous drugs to T.B. for envelopes of cash. He furnished Vicodin to T.B. on numerous occasions without a valid prescription or authorization, even though he considered T.B. to be addicted to the medication.

Had respondent's misconduct been limited to the incidents in 2010 in which he furnished Vicodin to T.B., license suspension and/or probation might have been an appropriate disciplinary order. But it must be noted that the 2010 incidents followed respondent in 2009 furnishing hundreds of tablets of his girlfriend's generic Vicodin from England in exchange for envelopes of cash. Respondent provided no plausible explanation or justification for that conduct. In sum, respondent engaged in very serious and repeated violations of his responsibilities as a pharmacist and of the pharmacy law. Protection of the public requires that his license be revoked.

6. Respondent was not represented by counsel and appeared unfamiliar with the board's consideration of mitigation and rehabilitation factors. Should respondent in the future seek to have his license reinstated, he should become familiar with those concepts as well as the board's other laws and regulations.

7. Respondent will be ordered to pay complainant's reasonable investigation and prosecution costs of \$7,584 as a condition precedent to reinstatement of his revoked license.

ORDER

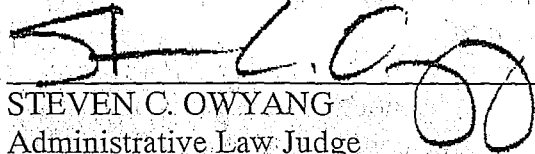
1. License number RPH 48797 issued to respondent Stephen F. Lee is revoked.

Respondent shall relinquish his wall license and pocket renewal license to the board ~~within 10 days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of his revoked license for three years from the effective date of this decision.~~

2. As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$7,584. This

amount shall be paid in full prior to the reapplication or reinstatement of his license unless otherwise ordered by the board.

DATED: May 14, 2013



STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

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Attorney General of California
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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 4107

11 **STEPHEN F. LEE**
12 **1512 California Street, Apt. 3**
13 **San Francisco, CA 94109**

A C C U S A T I O N

14 **Pharmacist License No. RPH 48797**

15 Respondent.

16 Complainant alleges:

17
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 August 13, 1996, the Board of Pharmacy issued Pharmacist License No.
22 RPH 48797 to Stephen F. Lee (Respondent). The License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on January 31, 2014, 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 (Code) unless otherwise indicated.

28 ///

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

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

8 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
9 drug or dangerous device except upon the prescription of an authorized prescriber.

10 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
11 controlled substance, except that furnished upon a valid prescription/drug order.

12 11. Section 4063 of the Code provides, in pertinent part, that no prescription for any
13 dangerous drug or dangerous device may be refilled except upon authorization of the prescriber.

14 12. Section 4064 of the Code provides, in pertinent part, that a prescription for a
15 dangerous drug or dangerous device may be refilled without the prescriber’s authorization if the
16 prescriber is unavailable to authorize the refill and if, in the pharmacist’s professional judgment,
17 failure to refill the prescription might interrupt the patients ongoing care and have a significant
18 adverse effect on the patient’s well-being. However, the pharmacist must inform both the patient
19 and the prescriber that the prescription was refilled pursuant to this section, must first have made
20 every reasonable effort to contact the prescriber, and must an adequate record of this exception.

21 13. Health and Safety Code section 11201 provides, in pertinent part, that a prescription
22 for a Schedule III, IV, or V controlled substance may be refilled without the prescriber’s
23 authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist’s
24 professional judgment, failure to refill the prescription might present an immediate hazard to the
25 patient’s health and welfare or might result in intense suffering. However, the pharmacist may
26 refill only an amount sufficient to maintain the patient until the prescriber can be contacted, must
27 keep specified records of the emergency refill, must inform both the patient and the prescriber of
28 the emergency refill, and must first have made every reasonable effort to contact the prescriber.

1 FACTUAL BACKGROUND

2 21. From an unknown start date until on or about September 16, 2010, Respondent was
3 employed as a staff pharmacist at a Costco Pharmacy (# 144) in San Francisco, CA (PHY 41120),
4 where by virtue of his licensure he had access to controlled substances and dangerous drugs.

5 22. On at least two occasions, in or about June 2009 and July 2009, exact dates unknown,
6 Respondent engaged in transactions with a co-worker, T.B.,¹ during which Respondent furnished
7 generic **Vicodin (Hydrocodone with APAP)** tablets to T.B. that Respondent said had come from
8 prescriptions dispensed or furnished to Respondent's girlfriend. On each occasion, Respondent
9 furnished approximately one hundred (100) to one hundred twenty (120) to T.B., in exchange for
10 which Respondent received \$200.00 in cash in an envelope from T.B.

11 23. On at least four and on up to as many as eight occasions, including but not limited to
12 on or about February 3, May 15, July 5, and August 2, 2010, Respondent furnished between eight
13 (8) and twenty (20) tablets of generic **Vicodin (Hydrocodone with APAP)** to T.B. in the absence
14 of a valid prescription or refill, and/or without the prescriber's authorization. Respondent stated
15 that on these occasions he was "advancing" generic **Vicodin (Hydrocodone with APAP)** to T.B.
16 in anticipation of upcoming prescriptions, refills, and/or prescriber authorizations. On none of
17 these occasions did Respondent contact the prescriber(s) or otherwise comply with the emergency
18 refill requirements stated in section 4064 of the Code or Health and Safety Code section 11201.

19
20
21 FIRST CAUSE FOR DISCIPLINE

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

23 24. Respondent is subject to discipline under section 4301(f) of the Code, in that
24 Respondent, as described in paragraphs 21 to 23 above, committed acts involving moral
25 turpitude, dishonesty, fraud, deceit, or corruption.

26 ///

27 _____
28 ¹ The full name will be revealed during the discovery process.

1 SECOND CAUSE FOR DISCIPLINE

2 (Furnishing of Dangerous Drug(s))

3 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, in that Respondent, as described in paragraphs 21 to 23 above, furnished to
5 himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or
6 abetted furnishing of, one or more dangerous drug(s).

7 THIRD CAUSE FOR DISCIPLINE

8 (Possession of Controlled Substance(s))

9 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
11 in paragraphs 21 to 23 above, possessed, conspired to possess, and/or assisted in or abetted
12 possession of, a controlled substance, without a prescription.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Furnishing Refill without Prescriber Authorization)

15 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
16 4063 of the Code, by reference to section 4064 of the Code and/or Health and Safety Code
17 section 11201, in that Respondent, as described in paragraphs 21 to 23 above, furnished,
18 conspired to furnish, and/or assisted in or abetted the furnishing of a refill of a dangerous drug
19 and/or a controlled substance, where that refill was not authorized by the prescriber, and did not
20 do so pursuant to the requirements of the emergency refill provision(s).

21 FIFTH CAUSE FOR DISCIPLINE

22 (Possession or Purchase of Controlled Substance(s) for Sale)

23 28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
24 and/or Health and Safety Code section 11351, in that Respondent, as described in paragraphs 21
25 to 23 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or
26 assisted in or abetted the possession or purchase for sale, of a controlled substance.

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28 ///

