

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

In the Matter of the Statement of Issues
Against:

TIFFANY JEANNE GIBBONS,

Respondent.

Case No. 4049

OAH No. 2011091075

DECISION AFTER NONADOPTION

Administrative Law Judge Glenn Stover, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 5, 2012.

Brett A. Kingsbury, Deputy Attorney General, represented complainant.

Respondent was present and represented herself.

The matter was submitted on January 5, 2012.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy (hereinafter "Board") on February 8, 2012. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter issued an Order of Non-adoption on April 6, 2012, and subsequently, on June 6, 2012, issued an Order Fixing Date for Submission of Argument. Written argument having been received from Complainant and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board of Pharmacy pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. Virginia Herold filed the Statement of Issues in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board").

2. On May 19, 2010, the Board received an application for registration as a pharmacy technician from Tiffany Jeanne Gibbons ("Respondent"). On March 1, 2011, the Board denied the application due to Respondent's criminal conviction record. Respondent appealed the denial and this hearing followed.

3. On January 31, 2008, in the Superior Court of California for the County of Sonoma, Respondent was convicted of a misdemeanor violation of California Health and Safety Code section 11550(a) (being under the influence of a controlled substance). This conviction resulted from an arrest on May 29, 2007 at a house for being under the influence of methamphetamines.

4. On the same date (January 31, 2008), Respondent was convicted, in the same court, of a misdemeanor violation of California Health and Safety Code section 11550(a) (being under the influence of a controlled substance). This conviction resulted from an arrest on December 31, 2007, when Respondent was driving a vehicle and was pulled over and arrested for being under the influence of methamphetamines. The arrest records revealed that Respondent used and was under the influence of a controlled substance narcotic stimulant (methamphetamines) in violation of Health and Safety Code section 11550(a) (State's Ex. 9).

5. Imposition of sentence on both convictions was suspended and Respondent was permitted to participate in the program established by Penal Code section 1210.1. Under this program, Respondent was required, for a time, to attend daily meetings of the Narcotics Anonymous program, pay fines to the State, and participate in a court-ordered treatment program designed for pregnant women. (Respondent testified at hearing that she was pregnant from about September of 2007 until she gave birth to her second child towards the end of June, 2008.)

6. Respondent submitted evidence of her having completed, in April of 2009, the "SACPA Treatment Program" offered by the Sonoma County Department of Alcohol and Other Drug Services. She submitted evidence, as well, of her completion of the First Steps Perinatal Program at the County's Drug Abuse Alternatives Center, also in April of 2009. In addition, she submitted evidence of her successful completion of the Outpatient Program of the Drug Abuse Alternatives Center, in September of 2009.

7. Both convictions were subsequently dismissed on July 16, 2009, pursuant to Penal Code section 1210.1, subdivision (e)(1).

8. Notwithstanding the dismissal of her convictions, Respondent admitted, under questioning, that she had self-administered methamphetamines repeatedly, both prior to and after her two arrests. She testified that she stopped taking the drugs on April 7, 2008, which she identified as her "sobriety date."

9. From the summer of 2009 until the present, Respondent has been enrolled at Santa Rosa Junior College, where she was certified as having completed the training to be a pharmacy technician. She submitted evidence that Santa Rosa Junior College placed her on its Honor Roll for having achieved a grade-point average of 3.0 or higher in these courses she took.

10. According to the Administrative Law Judge in this matter, Respondent credibly testified that, although she had self-administered methamphetamines in 2007, she ceased taking them on April 7, 2008, and had not taken them since. She also testified that she has worked hard on maintaining her sobriety and seeking support for same through participation in Narcotics Anonymous programs and the support of family and friends. She submitted two letters of support for her application to be licensed as a pharmacy technician: (1) Anna Woods, Employment and Training Counselor for SonomaWORKS, described Respondent's participation in court-ordered drug treatment programs, her efforts to reinforce her sobriety, and her pursuit of education necessary to obtain the pharmacy technician license; Ms. Woods concluded that Respondent "will continue to contribute in a positive and constructive ways in every endeavor." (2) Tina Skogberg, a Perinatal Counselor associated with the Drug Abuse Alternatives Center, described Respondent's participation in the court-ordered treatment program oriented to pregnant women and the drug-testing aspects of the program. Ms. Skogberg complimented Respondent for making "positive changes...in her life."

11. Respondent also submitted a transcript of courses taken at Santa Rosa Junior College, mostly oriented toward her application for licensure as pharmacy technician. The transcript reveals that, as of January 4, 2012, Respondent's overall grade point average in the courses she has taken at Santa Rosa Junior College is 3.4. Respondent also testified and submitted evidence regarding being certified by the Pharmacy Technician Certification Board on May 10, 2010. (AR 65:16-25; 66:1-9.) Such certification is achieved by meeting specific eligibility requirements and earning a passing score on the Pharmacy Technician Certification Exam (PTCE), an examination given by a private national board. The record reflects that the certification was set to expire on July 31, 2012. (State's Ex. 10.)

LEGAL CONCLUSIONS

1. California Penal Code section 1210.1 provides that persons charged with simple drug possession or being under the influence of a controlled substance are to be placed on probation and may be prescribed a course of treatment that will, ultimately, result in the dismissal of any conviction initially entered in their case. Once the course of treatment and any other provisions ordered by the court have been completed and any conviction initially entered is dismissed, "both the arrest and the conviction shall be deemed never to have occurred." (Pen. Code § 1210.1, subd. (e)(1).) Moreover, "a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the

defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate." (Pen. Code § 1210.1, subd. (e)(3).)

2. However, Business and Professions Code section 492 provides that dismissal of a conviction under Penal Code section 1210.1 does not prevent the denial of a license for "professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest." This means that Business and Professions Code Section 492 prohibits denial of a license based solely on convictions dismissed under Penal Code section 1210.1. However, Section 492 also permits the underlying acts of "misconduct" to form a basis for denial despite the fact that the information is derived from an arrest record related to the convictions. Although it was argued that Section 492 does not apply under the circumstances of the present case because both convictions were based on conduct that occurred in a non-business context and not while Respondent was engaged in work in a pharmacy, such arguments are without merit

Substantial legal authority provides that conduct occurring outside the practice of a profession may form the basis for imposing discipline on a license because such conduct reflects on a licensee's fitness and qualifications to practice that profession. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771) [repeated convictions involving alcohol use outside a physician's medical practice reflects poorly on the licensee's common sense and professional judgment, which are essential to the practice of medicine]; (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1411-1414, 1417-1418) [medical board's statute defining "unprofessional conduct" to include self-administration of drugs or alcohol in a manner that is dangerous to self or others was not unconstitutional when applied to after-hours conduct of a physician]; *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1207 [a single conviction for driving under the influence outside of work (an act that is necessarily dangerous to self or others) could support a disciplinary proceeding against a registered nurse].

3. The Board can discern no logical reason for differentiating between an applicant's after-hours misconduct and a licensee's after-hours misconduct when considering whether an individual is fit to perform the duties or functions authorized by the license.¹ Respondent's arrest record reveals, and Respondent admits (Finding 8), she repeatedly self-administered methamphetamine, a Schedule II controlled substance, in violation of Health and Safety Code section 11550(a). Such conduct, at the very least, demonstrates a lack of good judgment and an inability to follow the rules, which are all traits necessary for performance of the duties of this license with safety to the public. Consequently, while cause does not exist under Business and Professions Code sections 480, subdivision (a)(1) and 4301, subdivision (l), or California Code of Regulations, title 16, section 1770 based upon the convictions alone, the underlying acts of the conviction do support cause for denial of

¹ The Legislature uses "professional misconduct" and "unprofessional conduct" synonymously in referring to types of misconduct that would form the basis of state agency action against a licensee. See e.g., Business and Professions Code sections 809, 6049.1.

Respondent's application under Business and Professions Code sections 4300(c), 4301(j), and Health and Safety Code section 11550(a). Respondent's misconduct demonstrated that she used and was under the influence of a controlled narcotic substance in violation of state statutes regulating dangerous drugs. Factual Findings 3-8.

4. Cause for denial of registration exists pursuant to Business and Professions Code section 480, subdivision (a)(3) [license may be denied if applicant commits act that would be cause for license discipline if undertaken by a licensee], and Business and Professions Code section 4300, subdivision (c), as that section interacts with section 4301, subdivision (h), by reason of Respondent's admission that, in the past, she repeatedly self-administered methamphetamines. Specifically, section 4301 of the Business and Professions Code requires the Board to "take action against any holder of a license who is guilty of unprofessional conduct..." Subsection (h) of section 4301 defines, as one type of "unprofessional conduct," "[t]he administering to oneself of any controlled substance, or the use of any dangerous drug...to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license." By admitting repeated self-administration of methamphetamines (Finding 8),² both while driving a motor vehicle and while pregnant (Findings 4 and 5), Respondent clearly engaged in the type of "unprofessional conduct" prohibited to holders of the pharmacy technician license. Her conduct was harmful to herself, and potentially harmful both to the public, through the potential for a traffic accident, and to her unborn child, through effects *in utero*.

5. Although grounds for denial exist, the Board may still issue a probationary license on terms and conditions of probation. (Bus.& Prof.Code, § 4300(c).) Additionally, section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

6. Although there was no evidence presented of re-occurrence, the nature of Respondent's past misconduct is serious. Although pharmacy technicians are not independent practitioners and work under the close supervision of registered pharmacists, technicians have access to controlled substances as a consequence of their employment. As a result, pharmacy technicians hold positions of trust and are expected to strictly adhere to rules involving controlled substances and not work while impaired. Pharmacy technicians are also expected to exercise good judgment at all times for the protection of the public. Illegal use of methamphetamine, at the very least, demonstrates an inability to follow the rules and a lack of good judgment. (Factual Findings 3-8.)

7. However, matters in mitigation, extenuation and rehabilitation set forth in Findings 7 and 9 through 11 have been considered in making the following order.

² Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2), and is a "dangerous drug" as designated by Business and Professions Code section 4022.

Respondent is fast approaching the four-year anniversary of her sobriety. She has demonstrated, to the satisfaction of drug counselors with whom she has been working, that she has turned her life around and is no longer self-administering methamphetamines or other dangerous drugs. She has successfully completed the course work required for the pharmacy technician license, achieving grades high enough to be placed on Santa Rosa Junior College's Honor Roll in the process. Because, however, the practice of a pharmacy technician involves both access to and control over controlled substances and dangerous drugs, the Board must take steps to minimize the risk that the public is harmed by Respondent suffering a relapse into her past practice of drug use. Accordingly, although the Board applauds Respondent for the efforts she has undertaken, to date, to change her life, it is essential that any license she receives be conditioned on measures designed to ensure her continued sobriety and renunciation of the use of dangerous drugs. Consequently, it is critical that the license granted to Respondent be probationary, and that among its probationary terms is a strong array of measures designed to ensure her continued sobriety and fitness for licensure. This conclusion is based upon all of the Factual Findings and Legal Conclusions.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a Pharmacy Technician license³ shall be issued to Respondent and immediately revoked, the order of revocation is stayed and Respondent is placed on probation for a period of five years on the following terms and conditions:

1. **PTCB Certification Prior to Work**

Respondent shall be automatically suspended from working as a pharmacy technician until she is certified by the Pharmacy Technician Certification Board (PTCB) as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Failure to achieve certification within one (1) year of the effective date of this decision, or failure to maintain certification during the period of probation (if currently already certified) shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board. Respondent shall maintain this certification throughout the period of probation and shall provide satisfactory proof of such current PTCB certification to the Board or its designee every two years, or upon request by the Board's designee.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board-licensed premises (wholesaler, veterinary good-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances

³ Throughout these Ordering paragraphs, we use the term "license" interchangeably with "registration."

are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises by the Board 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.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (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 or federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent 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. Among other requirements, Respondent shall state in each report 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.

4. Interview with the Board

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

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in OAH case number 2011091075 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent'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 OAH case number 2011091075 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in OAH case number 2011091075 in advance of Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that she has read the decision in OAH case number 2011091075 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(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 or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether Respondent is considered an employee, independent contractor or volunteer.

7. Probation Monitoring Costs

Respondent 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.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician 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 Respondent's pharmacy technician 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 Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her pharmacy technician 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, Respondent 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 Respondent's license history with the Board.

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

10. Notification of a Change in Name, Residence Address, Mailing Address or Employment

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

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

11. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of forty (40) hours per calendar month as 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, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of forty (40) hours per calendar month as designated by the Board in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and nonconsecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which Respondent is not working for at least forty (40) hours per calendar month as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least forty (40) hours per calendar month as a pharmacy technician as defined by Business and Professions Code section 4115.

12. Violation of Probation

If a Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, 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 that was stayed.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that 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 Respondent 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.

13. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming

attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

15. 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 or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent 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.

16. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent 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 Respondent 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 timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent 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 Respondent. Failure to timely provide such documentation shall be considered a violation of probation. 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 be considered a violation of probation and shall result in the automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, Respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug

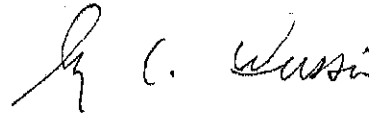
manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, Respondent 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 in this order.

Failure to comply with this suspension shall be considered a violation of probation.

This Decision shall become effective on September 26, 2012

IT IS SO ORDERED this 27th day of August 2012.



STANLEY C. WEISSER
Board President

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

In the Matter of the Statement of Issues Against:

TIFFANY JEANNE GIBBONS

Respondent.

Case No. 4049

OAH No. 2011091075

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

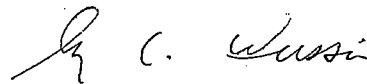
ORDER OF NONADOPTION OF PROPOSED DECISION

YOU ARE HEREBY NOTIFIED pursuant to Section 11517 of the Government Code, the California State Board of Pharmacy hereby non-adopts the proposed decision in Statement of Issues case No. 4049. A copy of the proposed decision is attached hereto.

The board will decide the case itself upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Board has ordered a transcript and will notify the parties when the transcript has been prepared and of the date set for the submission of written argument.

IT IS SO ORDERD this 6th day of April 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY WEISSER
Board President

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

In the Matter of the
Statement of Issues Against:

TIFFANY JEANNE GIBBONS,

Respondent.

Case No. 4049

OAH No. 2011091075

PROPOSED DECISION

Administrative Law Judge Glenn Stover, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 5, 2012.

Brett A. Kingsbury, Deputy Attorney General, represented complainant.

Respondent was present and represented herself.

The matter was submitted on January 5, 2012.

FACTUAL FINDINGS

1. Virginia Herold filed the Statement of Issues in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board").

2. On May 19, 2010, the Board received an application for registration as a pharmacy technician from Tiffany Jeanne Gibbons ("Respondent"). On March 1, 2011, the Board denied the application due to Respondent's criminal conviction record. Respondent appealed the denial and this hearing followed.

3. On January 31, 2008, in the Superior Court of California for the County of Sonoma, Respondent was convicted of a misdemeanor violation of California Health and Safety Code section 11550(a) (being under the influence of a controlled substance). This conviction resulted from an arrest on May 29, 2007 at a house for being under the influence of methamphetamines.

4. On the same date (January 31, 2008), Respondent was convicted, in the same court, of a misdemeanor violation of California Health and Safety Code section 11550(a) (being under the influence of a controlled substance). This conviction resulted from an arrest on December 31, 2007, when Respondent was driving a vehicle and was pulled over and arrested for being under the influence of methamphetamines.

5. Imposition of sentence on both convictions was suspended and Respondent was permitted to participate in the program established by Penal Code section 1210.1. Under this program, Respondent was required, for a time, to attend daily meetings of the Narcotics Anonymous program, pay fines to the State, and participate in a court-ordered treatment program designed for pregnant women. (Respondent testified at hearing that she was pregnant from about September of 2007 until she gave birth to her second child towards the end of June, 2008.)

6. Respondent submitted evidence of her having completed, in April of 2009, the "SACPA Treatment Program" offered by the Sonoma County Department of Alcohol and Other Drug Services. She submitted evidence, as well, of her completion of the First Steps Perinatal Program at the County's Drug Abuse Alternatives Center, also in April of 2009. In addition, she submitted evidence of her successful completion of the Outpatient Program of the Drug Abuse Alternatives Center, in September of 2009.

7. Both convictions were subsequently dismissed on July 16, 2009, pursuant to Penal Code section 1210.1, subdivision (e)(1).

8. Notwithstanding the dismissal of her convictions, Respondent admitted, under questioning, that she had self-administered methamphetamines repeatedly, both prior to and after her two arrests. She testified that she stopped taking the drugs on April 7, 2008, which she identified as her "sobriety date."

9. From the summer of 2009 until the present, Respondent has been enrolled at Santa Rosa Junior College, where she was certified as having completed the training to be a pharmacy technician. She submitted evidence that Santa Rosa Junior College placed her on

its Honor Roll for having achieved a grade-point average of 3.0 or higher in these courses she took.

10. Respondent credibly testified that, although she had self-administered methamphetamines in 2007, she ceased taking them on April 7, 2008, and had not taken them since. She also testified that she has worked hard on maintaining her sobriety and seeking support for same through participation in Narcotics Anonymous programs and the support of family and friends. She submitted two letters of support for her application to be licensed as a pharmacy technician: (1) Anna Woods, Employment and Training Counselor for SonomaWORKS, described Respondent's participation in court-ordered drug treatment programs, her efforts to reinforce her sobriety, and her pursuit of education necessary to obtain the pharmacy technician license; Ms. Woods concluded that Respondent "will continue to contribute in a positive and constructive ways in every endeavor." (2) Tina Skogberg, a Perinatal Counsellor associated with the Drug Abuse Alternatives Center, described Respondent's participation in the court-ordered treatment program oriented to pregnant women and the drug-testing aspects of the program. Ms. Skogberg complimented Respondent for making "positive changes...in her life."

11. Respondent also submitted a transcript of courses taken at Santa Rosa Junior College, mostly oriented toward her application for licensure as pharmacy technician. The transcript reveals that, as of January 4, 2012, Respondent's overall grade point average in the courses she has taken at Santa Rosa Junior College is 3.4

LEGAL CONCLUSIONS

1. California Penal Code section 1210.1, provides that persons charged with simple drug possession or being under the influence of a controlled substance are to be placed on probation and may be prescribed a course of treatment that will, ultimately, result in the dismissal of any conviction initially entered in their case. Once the course of treatment and any other provisions ordered by the court have been completed and any conviction initially entered is dismissed, "both the arrest and the conviction shall be deemed never to have occurred." (Pen. Code § 1210.1, subd. (e)(1).) Moreover, "a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate."

2. The Board cites to Business and Professions Code section 492 in justification of its use of the dismissed convictions as grounds for denying Respondent's application for licensure as a pharmacy technician. That Code provision, however, only provides that

dismissal of a conviction under Penal Code section 1210.1 does not prevent the denial of a license for “professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.” Business and Professions Code Section 492 prohibits denial of a license based on convictions dismissed under Penal Code section 1210.1 under the circumstances of the present case; therefore, there is no ground for denying Respondent a license based on either the convictions described in Findings 3 and 4, above, nor for violation of the statutes upon which those convictions were based. Neither of Respondent’s convictions, nor the statutes whose violation served as the basis for those convictions, related to “professional misconduct.” That is, both convictions were based on conduct that occurred in a non-business context, and not while Respondent was engaged in work in a pharmacy.¹ Based on the foregoing, it is determined that it was not established that cause for denial of a registration exists under Business and Professions Code sections 480, subdivision (a)(1) and 4301, subdivision (1), or California Code of Regulations, title 16, section 1770, all of which authorize license denial on the basis of a conviction.

3. Cause for denial of registration exists pursuant to Business and Professions Code section 480, subdivision-(a)(3), [license may be denied if applicant commits act that would be cause for license discipline if undertaken by a licensee] and Business and Professions Code section 4300, subdivision (c), as that section interacts with section 4301, subdivision (h), by reason of Respondent’s admission that, in the past, she repeatedly self-administered methamphetamines. Specifically, section 4301 of the Business and Professions Code requires the Board to “take action against any holder of a license who is guilty of unprofessional conduct...” Subsection (h) of section 4301 defines, as one type of “unprofessional conduct,” “[t]he administering to oneself of any controlled substance, or the use of any dangerous drug...to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.” By admitting repeated self-administration of methamphetamines (Finding 8),² both while driving a motor vehicle and while pregnant (Findings 4 and 5), Respondent clearly engaged in the type of “unprofessional conduct” prohibited to holders of the pharmacy technician license. Her conduct was harmful to herself, and potentially harmful both to the public, through the potential for a traffic accident, and to her unborn child, through effects *in utero*.

¹ To tag Respondent’s admitted conduct as “professional misconduct” would impermissibly conflate “professional misconduct” with “unprofessional conduct.” Compare Business and Professions Code Section 492 and Business and Professions Code Section 4301.

² Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2), and is a “dangerous drug” as designated by Business and Professions Code section 4022.

4. The matters in mitigation, extenuation and rehabilitation set forth in Findings 7 and 9 through 11 have been considered in making the following order. Respondent is fast approaching the four-year anniversary of her sobriety. She has demonstrated, to the satisfaction of drug counselors with whom she has been working, that she has turned her life around and is no longer self-administering methamphetamines or other dangerous drugs. She has successfully completed the course work required for the pharmacy technician license, achieving grades high enough to be placed on Santa Rosa Junior College's Honor Roll in the process. Because, however, the practice of a pharmacy technician involves both access to and control over controlled substances and dangerous drugs, the Board must take steps to minimize the risk that the public is harmed by Respondent suffering a relapse into her past practice of drug use. Accordingly, although the Board applauds Respondent for the efforts she has undertaken, to date, to change her life, it is essential that any license she receives be conditioned on measures designed to ensure her continued sobriety and renunciation of the use of dangerous drugs. Consequently, it is critical that the license granted to Respondent be probationary, and that among its probationary terms is a strong array of measures designed to ensure her continued sobriety.

ORDER

The application of Respondent Tiffany Jeanne Gibbons for the issuance of a pharmacy technician registration is denied. However, Respondent shall be issued a probationary license,³ upon satisfaction of the following: Respondent shall first meet all statutory and regulatory requirements for the issuance of a pharmacy technician registration. Following the satisfaction of this condition, Respondent's license shall be issued and immediately revoked, the order of revocation stayed, and Respondent placed on probation for a period of five years on the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (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

³ Throughout these Ordering paragraphs, we use the term, "license," interchangeably with "registration."

- 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 or federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent 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. Among other requirements, Respondent shall state in each report 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 prior notice, Respondent 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 any scheduled interview without prior notification to Board staff, or failure to appear at 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. Cooperate with Board Staff

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

5. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 2011091075 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent'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 2011091075 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 2011091075 in advance of Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that she has read the decision in case number 2011091075 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(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 or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether Respondent is considered an employee, independent contractor or volunteer.

6. Probation Monitoring Costs

Respondent 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.

7. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician 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 Respondent's pharmacy technician 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 Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her pharmacy technician 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, Respondent 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 Respondent's license history with the Board.

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

9. Notification of a Change in Name, Residence Address, Mailing Address or Employment

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

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

10. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of hours per calendar month as 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, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of hours per calendar month as designated by the Board in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent'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 work" means calendar month during which Respondent is not working for at least the minimum number of hours designated by the Board as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least the number of hours designated by the Board as a pharmacy technician as defined by Business and Professions Code section 4115.

11. Violation of Probation

If a Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, 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 that was stayed.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that 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 Respondent 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.

12. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

13. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

14. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent 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 Respondent 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 timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent 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 Respondent. Failure to timely provide such documentation shall be considered a violation of probation. 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 be considered a violation of probation and shall result in the automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, Respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, Respondent 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 in this order.

Failure to comply with this suspension shall be considered a violation of probation.

DATED: February 2, 2012



GLENN STOVER

Administrative Law Judge

Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 BRETT A. KINGSBURY
Deputy Attorney General
4 State Bar No. 243744
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1192
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Statement of Issues
11 Against:

Case No. 4049

12 **TIFFANY GIBBONS**
13 **842 Pulteney Place**
Windsor, California 95492

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about May 19, 2010, the Board of Pharmacy, Department of Consumer Affairs
21 (Board) received an application for a Pharmacy Technician Registration from Tiffany Jeanne
22 Gibbons (Respondent). On or about May 14, 2010, Respondent certified under penalty of perjury
23 to the truthfulness of all statements, answers, and representations in the application. The Board
24 denied the application on March 1, 2011.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states:

2 ". . . .

3 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
4 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
5 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
6 may issue the license subject to any terms or conditions not contrary to public policy, including,
7 but not limited to, the following:

8 "(1) Medical or psychiatric evaluation.

9 "(2) Continuing medical or psychiatric treatment.

10 "(3) Restriction of type or circumstances of practice.

11 "(4) Continuing participation in a board-approved rehabilitation program.

12 "(5) Abstention from the use of alcohol or drugs.

13 "(6) Random fluid testing for alcohol or drugs.

14 "(7) Compliance with laws and regulations governing the practice of pharmacy.

15 ". . . .

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

21 **STATUTORY AND REGULATORY PROVISIONS**

22 5. Section 480 of the Business and Professions Code provides, in pertinent part, that a
23 board may deny a license if the applicant has been convicted of a crime substantially related to
24 the qualifications, functions or duties of the business or profession for which application is made,
25 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done
26 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made
27 a false statement of fact required to be revealed in the application.

28 6. Section 492 of the Code states:

1 "Notwithstanding any other provision of law, successful completion of any diversion
2 program under the Penal Code, or successful completion of an alcohol and drug problem
3 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
4 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
5 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
6 division, from taking disciplinary action against a licensee or from denying a license for
7 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
8 record pertaining to an arrest.

9 "This section shall not be construed to apply to any drug diversion program operated by any
10 agency established under Division 2 (commencing with Section 500) of this code, or any
11 initiative act referred to in that division."

12 7. Section 4301 of the Code states:

13 "The board shall take action against any holder of a license who is guilty of unprofessional
14 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
15 Unprofessional conduct shall include, but is not limited to, any of the following:

16 ". . . .

17 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
18 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
19 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
20 to the extent that the use impairs the ability of the person to conduct with safety to the public the
21 practice authorized by the license.

22 ". . . .

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

25 "(k) The conviction of more than one misdemeanor or any felony involving the use,
26 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
27 combination of those substances.

28

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

18 "

19 8. Section 4022 of the Code states

20 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
21 humans or animals, and includes the following:

22 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
23 prescription," "Rx only," or words of similar import.

24 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
25 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
26 in with the designation of the practitioner licensed to use or order use of the device.

27 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
28 prescription or furnished pursuant to Section 4006."

1 circumstances are that on or around May 29, 2007, Respondent was arrested at a house for being
2 under the influence of methamphetamines.

3 14. On or around January 31, 2008, in the Superior Court of California for the County of
4 Sonoma, Case # SCR-528459, Respondent was convicted of violating California Health & Safety
5 Code § 11550(a) (Being Under the Influence of a Controlled Substance), a misdemeanor. The
6 circumstances are that on or around December 31, 2007, Respondent was driving a vehicle when
7 she was pulled over and arrested for being under the influence of methamphetamines.

8 **SECOND CAUSE FOR DENIAL OF APPLICATION**

9 (Violation of State Statutes Regulating Dangerous Drugs)

10 15. Respondent's application is subject to denial pursuant to Code sections 4300(c) and
11 4301(j) and California Health and Safety Code section 11550(a) in that Respondent violated a
12 state statute regulating a dangerous drug. The circumstances are described above in the First
13 Cause for Denial of Application.

14 **THIRD CAUSE FOR DENIAL OF APPLICATION**

15 (Self-Administration of Methamphetamines)

16 16. Respondent's application is subject to denial pursuant to Code sections 4300(c) and
17 4301(h) in that Respondent self-administered a dangerous drug or controlled substance to the
18 extent or in a manner dangerous to herself or others or to the extent that it impairs her ability to
19 conduct safely the practice authorized by registration. The circumstances are described above in
20 the First Cause for Denial of Application.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

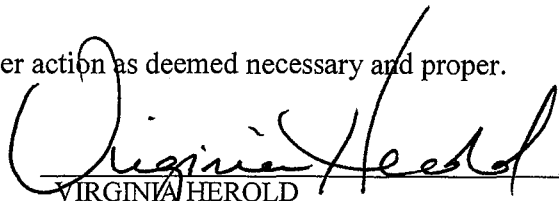
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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. Denying the application of Tiffany Jeanne Gibbons for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/15/11



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

SF2011201662
20476149.doc