

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

In the Matter of the Accusation Against:

LISELI MULALA-SIMPSON,
a.k.a Liseli Inonge Mulala-Simpson,
1580 Valencia St. 100
San Francisco, CA 94110

Pharmacist License Number RPH 54290

Respondent.

Case No. 4649

OAH No. 2013080270

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 following change is made to paragraph two on page one under Factual Findings:

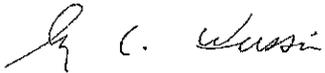
“On March 20, 2003, the Board issued Pharmacist License Number RPH 54290 to Liseli Mulala-Simpson, a.k.a. Liseli Inonge Mulala-Simpson. (respondent). Respondent’s license is renewed and current, and will expire on September 30, 2014.”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on May 19, 2014.

IT IS SO ORDERED this 18th day of April, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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LISELI MULALA-SIMPSON,
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Pharmacist License Number RPH 54290,

Respondent.

Case No. 4649

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PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 20, 2014.

Gregory Tuss, Deputy Attorney General, represented complainant.

Respondent Liseli Mulala-Simpson, a.k.a. Liseli Inonge Mulala-Simpson was present and was represented by Robert F. Hahn, Attorney at Law.

Submission of the matter was deferred to March 5, 2014, for receipt of arguments concerning costs. Arguments were received, marked for the record and considered.

The matter was submitted on March 5, 2014.

FACTUAL FINDINGS

1. Complainant Virginia Herold made this accusation in her official capacity as the Executive Officer of the Board of Pharmacy, State of California (Board).

2. On March 20, 2003, the Board issued Pharmacist License Number RPH 5490 to Liseli Mulala-Simpson, a.k.a. Liseli Inonge Mulala-Simpson. (respondent). Respondent's license is renewed and current, and will expire on September 30, 2014.

3. On September 22, 2011, in the Superior Court of California, County of San Francisco, respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving under the influence). Execution of sentence was suspended, and

respondent was placed on three years' unsupervised probation. The terms and conditions of probation included 10 days incarceration, which respondent served on the sheriff's work alternative program and completion of a driving under the influence program.

4. The facts and circumstances surrounding the conviction are that on July 3, 2011, respondent hit a pole at Highway 101 at Vermont Street in San Francisco, California. When the Highway Patrol responded to the location, they found respondent injured, behind the wheel with her vehicle facing the wrong way on the off ramp. She was in an ambulance. The officer smelled the odor of an alcoholic beverage on her breath. She admitted to consuming between six and eight drinks and then got into her vehicle to drive home. She failed to properly perform a series of field sobriety tests. She took unsure steps, spoke with a heavily slurred speech, had red, watery eyes, and was unsteady on her feet. Her blood alcohol level was measured at the scene to be .232 percent.

5. Respondent has met all the terms and conditions of her probation. Her probation was terminated early and the conviction was expunged pursuant to Penal Code section 1203.4.

6. Respondent is employed as a pharmacist by Walgreen's pharmacy and is a store manager at the Walgreen's located in St. Luke's Hospital, San Francisco. Her district supervisor testified at the hearing and wrote a letter on respondent's behalf. She states that respondent is one of her top pharmacists. Respondent is pleasant and dedicated. Her supervisor has complete confidence in respondent. Respondent presented her performance reviews for 2011, 2012, and 2013. Her evaluations reflect a high level of competency.

7. Respondent's supervising pharmacist at Walgreen's pharmacy testified at the hearing. He has been her supervisor since 2007. He also wrote a letter on respondent's behalf. He finds respondent tireless in providing community outreach and service. She works with UCSF pharmacy students in community out reach. She also teaches at UCSF and recently acted as one of the four judges at the UCSF Counseling Competition. He does not believe respondent is a danger to the public. He is convinced that the driving under the influence incident was a momentary lapse of judgment and that she will not make that mistake again.

8. Respondent presented a letter from Alison B. Costa, MA, LFMT. Respondent has been in counseling with Ms. Costa since 2011. Ms. Costa assessed respondent for alcohol abuse and dependence. Respondent does not fit the criteria for either diagnosis. The incident that caused respondent to drink to excess was during a very emotional time when she was under unusual stress. Respondent has worked hard to stabilize and improve her life. It is extremely unlikely that anything like this will happen again.

9. Respondent has continued her education. She received a Master's degree in Public Health from San Francisco State University in 2013 and is presently in a PhD program in Public Health at Walden University and estimates graduation in 2016.

10. Respondent's neighbor and friend testified at the hearing and wrote a letter on respondent's behalf. She testified to respondent's commitment to be a responsible mother, pharmacist, teacher, volunteer, and friend. Respondent is a "gift to her community and school." Clearly this incident was not a reflection of respondent's good character.

11. Respondent has no prior disciplinary action with the Board. She has not had any problems with alcohol related matters or any criminal issues before or since this incident. It has been almost three years since the incident that occurred on July 3, 2011.

12. The Board incurred costs in the amount of \$3,512.50.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Factual Findings 3 and 4, cause for disciplinary action exists pursuant to Business and Professions Code sections 490, subdivision (a) (conviction of a substantially related crime), 4301, subdivisions (l) (conviction), and (h) (self-administration of alcoholic beverages causing danger).

2. The matters set forth in Factual Findings 5 through 11, have been considered in making the following order.

Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal 3d 1061, 1070.)

There is no evidence respondent has, or ever had abused alcohol. Her offense can rightly be characterized as an aberration, a one-time act of poor judgment. Since then, respondent has fully atoned for her conduct. She has had a stellar work history. Her employer knows of her conviction yet has expressed no concern that respondent is likely to reoffend. Most importantly, respondent has demonstrated the requisite mental state that establishes rehabilitation and thus the likelihood that the public safety will not be put at risk by her continued licensure. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation.

Not every violation of the Pharmacy Law requires that a pharmacist be put on probation in order to protect the public and to allow the board to monitor her performance and rehabilitation. In a case such as this, where respondent may be said to be fully rehabilitated from her crime, protection of the public will be served by a disciplinary order

that does not mandate a period of probation. Business and Professions Code section 495 provides, "Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate . . . , for any act that would constitute grounds to suspend or revoke a license or certificate." Issuance of a public reproof or reprimand is the appropriate discipline to be imposed upon respondent and is sufficient in this case to protect the public.

3. Pursuant to Factual Finding 12, the Board has requested cost in the amount of \$3512.50. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court held that a licensing board may not assess the full costs of investigation and prosecution when a licensee, who has committed some misconduct, has used the hearing process to obtain a dismissal of other charges or a reduction in the severity of the discipline imposed. (*Zuckerman, supra*, 29 Cal.4th at p. 45.) The Board must consider the licensee's "subjective good faith belief" in the merits of the licensee's position and whether the licensee has raised a "colorable challenge" to the proposed discipline. The Board must consider whether the licensee will be "financially able to make later payments." Lastly, the Board may not assess full costs of investigation and enforcement when it has conducted a disproportionately large investigation to prove that the licensee engaged in "relatively innocuous misconduct." (*Ibid.*) The *Zuckerman* factors have been considered.

Respondent successfully argued a substantial reduction of the discipline sought against her at hearing. Respondent incurred substantial costs in her defense and there is substantial evidence of her rehabilitation. The evidence established respondent is not a danger to the general public or her clients. The costs will be reduced to \$1,500. In view of the *Zuckerman* factors, the Board's request for cost recovery is reduced.

ORDER

1. The written decision in this matter shall serve as a public reprimand to respondent Liseli Mulala-Simpson a.k.a. Liseli Inonge Mulala-Simpson, Pharmacy License Number RPH 54290 for violation of Business and Professions Code sections.

2. The Board's request for recovery of costs is reduced to \$1,500.

DATED: March 5, 2014

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **LISELI MULALA-SIMPSON**
a.k.a. Liseli Inonge Mulala-Simpson
13 **1580 Valencia Street, #100**
San Francisco, California 94110
14
15 **Pharmacist License Number RPH 54290**
16
17 Respondent

Case Number 4649
ACCUSATION

18 Complainant Virginia Herold alleges:

19 **PARTIES**

- 20 1. Complainant brings this accusation solely in her official capacity as the Executive
21 Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
22 2. On or about March 20, 2003, the Board issued Pharmacist License Number
23 RPH 54290 to respondent Liseli Mulala-Simpson, a.k.a. Liseli Inonge Mulala-Simpson. This
24 pharmacist license was in full force and effect at all times relevant to the charges brought in this
25 accusation and will expire on September 30, 2014, unless renewed.

26 **JURISDICTION**

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

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

6 ...

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

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

25 “For the purpose of denial, suspension, or revocation of a personal or facility license
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare.”

3 **COST RECOVERY**

4 9. Section 125.3, subdivision (a), states:

5 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
6 proceeding before any board within the department or before the Osteopathic Medical Board,
7 upon request of the entity bringing the proceedings, the administrative law judge may direct a
8 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
9 to exceed the reasonable costs of the investigation and enforcement of the case.”

10 **FACTUAL BACKGROUND**

11 10. On July 3, 2011, at about 8:19 p.m., California Highway Patrol officers responded to
12 the scene of an accident at Highway 101 at Vermont Street in San Francisco, California.
13 Respondent was in an ambulance and her car was facing the wrong way on the off ramp. The
14 officer smelled the odor of an alcoholic beverage coming from respondent. She admitted that she
15 drove the car and had had between six to eight drinks. She said she was not injured but did not
16 remember hitting anything with her car. She said that she knew she should not have been driving.
17 She said that her impairment was about 8 out of 10.

18 11. She failed to properly perform a series of field sobriety tests. She took unsure steps,
19 spoke with a heavily-slurred speech, had red, watery eyes, and was unsteady on her feet.
20 Respondent’s blood alcohol concentrations were measured at 0.237 at 9:58 p.m. and 0.232 at 9:59
21 p.m.

22 12. On or about September 22, 2011, in *People of the State of California v. Liseli Inonge*
23 *Mulala-Simpson*, Superior Court of California, County of San Francisco Case Number 2460977,
24 respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b)
25 (driving under the influence). Execution of sentence was suspended, and respondent was placed
26 on three years’ unsupervised probation. The terms and conditions of probation included 10 days’
27 incarceration and completion of a driving under the influence program.

28 ///

1 paragraphs 10-14 above, on or about September 22, 2011, respondent pled guilty to a
2 misdemeanor violation of Vehicle Code section 23152, subdivision (b).

3
4 **THIRD CAUSE FOR DISCIPLINE**
5 **Bus. & Prof. Code, § 4301, subd. (h)**
6 **Unprofessional Conduct: Self-administration of Alcoholic Beverages**
7 **Causing Danger, Injury, or Unsafe Practice**

8 19. The allegations of paragraphs 10-14 are realleged and incorporated by reference as if
9 fully set forth.

10 20. Respondent has subjected her pharmacist license to disciplinary action under section
11 4301, subdivision (h), for engaging in unprofessional conduct by using alcoholic beverages to the
12 extent or in a manner as to be dangerous or injurious to herself, to any other person or to the
13 public, or to the extent that the use impaired her ability to conduct with safety to the public the
14 practice of pharmacy. As set forth in paragraphs 10-14 above, on July 3, 2011, respondent drove
15 a car with a blood alcohol content of greater than 0.08 percent. On or about September 22, 2011,
16 she pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b).

17 **PRAYER**

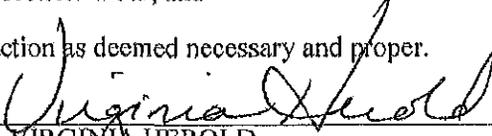
18 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
19 accusation, and that following the hearing, the Board of Pharmacy issue a decision:

20 1. Revoking or suspending Pharmacist License Number RPH 54290 issued to
21 respondent Liseli Mulala-Simpson, a.k.a. Liseli Inonge Mulala-Simpson;

22 2. Ordering respondent Liseli Mulala-Simpson, a.k.a. Liseli Inonge Mulala-Simpson, to
23 pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case
24 pursuant to Business and Professions Code section 125.3; and

25 3. Taking such other and further action as deemed necessary and proper.

26 DATED: 7/18/13

27 
28 VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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