

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

In the Matter of the Accusation Against:

KATHERINE MAI TRAM BLANZY

Pharmacist License No. RPH 68317

Respondent.

Case No. 5428

OAH No. 2015110282

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on July 14, 2016.

It is so ORDERED on June 14, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on March 17, 2016, in Oakland, California.

Deputy Attorney General Maretta Ward represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy.

Jonathan Klein represented respondent Katherine Mai Tram Blanzzy, who was present throughout the administrative hearing.

The record in this matter was left open until March 25, 2016, for complainant to submit a response to evidence received from respondent at hearing. Complainant's response was timely received, marked as Exhibit 10 and considered.

The matter was submitted for decision on March 25, 2016.

FACTUAL FINDINGS

1. Complainant Virginia K. Herold made the amended accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board).

2. On October 15, 2012, the board issued Pharmacist License No. RPH 68317 to Katherine Mai Tram Blanzzy (respondent). The license was active at all times relevant here.

Cause for Discipline

3. Respondent was employed as a pharmacist at Walgreens Pharmacy beginning in March 2013. On September 26, 2014, respondent was advised that all pharmacy employees and management staff would be undergoing a random drug screen. Respondent's urine test was positive for the presence of marijuana.¹ Walgreens has a zero tolerance policy for use of non-prescribed controlled substances by pharmacy employees, and respondent was terminated following the test. On October 8, 2014, a Walgreens pharmacist notified the Board that respondent had been terminated due to a random positive drug test.

4. As a result of the notification, the Board opened an investigation. The level of marijuana in respondent's drug screen indicated that she had used the drug within the seven days of the test.

5. On October 21, 2014, Maximus² notified the Board that respondent had requested acceptance into the Pharmacist Recovery Program due to her positive drug screen and job loss, but had later decided not to enroll.

6. Board Investigator Anne Hunt was assigned to conduct the investigation. Hunt contacted respondent on June 20, 2014. During the conversation, respondent admitted that while visiting friends who were smoking marijuana, she made the mistake of agreeing to join them. She was not scheduled to work the next day. Respondent advised Hunt that she had only smoked marijuana on two or three occasions in the past and had never been under the influence at work.

Respondent also advised Hunt that after being terminated by Walgreens she contacted Maximus to demonstrate to the Board that she was taking the matter seriously. However, after reading the program criteria, she concluded that she did not fit within the criteria. Respondent apologized for her mistake and pledged to make amends.

7. Hunt found respondent to be contrite and credible when she interviewed her.

Costs of Investigation and Enforcement

8. The Board has incurred \$1,070 in investigation costs, and \$4,970 in enforcement costs.

¹ Marijuana is a Scheduled I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(20), and is a dangerous drug as defined by Business and Professions Code section 4022.

² The Board has a contract with Maximus to provide a substance abuse recovery services for licensees.

Respondent's Evidence

9. Respondent attended Diablo Valley College and City College of San Francisco, before earning her Doctor of Pharmacy degree from Nova Southeastern University in Florida. After becoming licensed in California in September 2012, respondent began working for her father, a licensed pharmacist who owned an independent pharmacy in San Francisco.

10. Respondent began working full-time as a floater pharmacist for Walgreens in March 2013. She passed a drug test when she was hired. Respondent enjoyed her work as a floater; she moved between Walgreens stores to fill in for pharmacists who were out on leave, or to fill a staffing shortage. Through her work as a floater, respondent was exposed to different stores and procedures. In addition to her pharmacist duties, she supervised pharmacy technicians and assisted with over the counter medication sales.

11. Respondent worked well with her coworkers at Walgreens; she was viewed as a natural leader and team player. Respondent was an efficient and cheerful employee and was well-liked by customers.

12. Respondent accepts full responsibility for her poor judgment; she attended a party a few days before the random drug test on September 26, 2014, and was off work the following day. At the party, respondent was offered marijuana. Against her better judgment she joined the others in smoking it. Respondent testified credibly that she is very remorseful and has learned her lesson. Respondent is not addicted to marijuana. She realizes that she has jeopardized her career and is terribly sorry for her mistake. Respondent has tried marijuana on a couple of occasions, but testified credibly that she will not do so in the future. There is no evidence that respondent has an alcohol or substance abuse problem. Respondent felt out of place at the Alcoholics Anonymous meetings she attended after being terminated. Because she is not addicted to marijuana or any other controlled substance she is very confident in her ability to avoid the use of any non-prescribed controlled substances in the future. Respondent contacted Maximus to inquire about the program, but chose not to enroll because she does not believe she would benefit from substance abuse treatment.

13. Viva Nguyen, the former assistant store manager at a Walgreens where respondent worked during her employment, testified at hearing. Nguyen worked with respondent consistently for three months while a pharmacist was on maternity leave. Nguyen estimates that she worked with respondent for a total of approximately six months. Nguyen had the opportunity to observe respondent's interaction with customers and pharmacy staff. Nguyen found respondent to be a responsible employee; respondent was thorough, sensitive to patient complaints, enthusiastic and a team player. Respondent was reliable, and routinely arrived 30 minutes before her shift began. Nguyen is aware of respondent's positive drug test; however, she never suspected respondent of being under the influence of alcohol or drugs at work. Nguyen would welcome the opportunity to work with respondent again.

14. Vivian Ly, the pharmacist in charge at a Walgreens in Daly City, testified at hearing. Ly supervised respondent over approximately nine months and wrote her 2014 performance evaluation. While respondent worked for Walgreens she was reliable, competent and well-liked by patients. Respondent arrived at work on time and filled prescriptions correctly. Respondent was dedicated to her patients, passionate about her work as a pharmacist and handled customers very well. Ly received positive feedback regarding respondent from pharmacy technicians and other pharmacists. Ly never suspected respondent of being under the influence at work.

15. Following her termination, respondent and her husband relocated to Michigan where she is licensed as a pharmacist. The Michigan Board of Pharmacy is aware of this action and is awaiting the outcome.

Starting in May 2015, respondent began working as a pharmacist on a per diem basis for AHS PharmStat in Michigan. Since September 2015, respondent has been employed full-time for Allergan Pharmaceuticals as a medical science liaison. Respondent travels in Michigan and Ohio answering physicians' questions about Allergan's medications and finding sites for clinical trials. Respondent passed drug tests at both companies before beginning work.

16. Respondent has no prior disciplinary history on her license. She has never been arrested for, or convicted of, a crime.

LEGAL CONCLUSIONS

1. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 957.)

Causes for Discipline

2. Business and Professions Code section 4301, subdivisions (j) and (o), and section 4060, authorize the Board to impose discipline on a licensee who violates statutes regulating controlled substances and dangerous drugs. As set forth in Factual Findings 3 through 5, cause for discipline exists pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), and section 4060.

3. Business and Professions Code section 4301, subdivision (h), and Health and Safety Code section 1170, authorize the Board to impose discipline on a licensee who administers a controlled substance to herself. By reason of the matters set forth in Factual Findings 3 through 5, respondent's self-administration of marijuana constitutes cause for

discipline pursuant to Business and Professions Code section 4301, subdivision (h), and Health and Safety Code section 1170.

Disciplinary Considerations

4. Cause for discipline having been established, the issue is the level of discipline to impose. The Board is a consumer protection agency with the primary mission of protecting the health, safety, and welfare of the public. The Board's criteria of rehabilitation (Cal. Code Regs., tit. 16, § 2522) and its disciplinary guidelines (Cal. Code Regs., tit. 16, § 2524) have been considered in determining the appropriate discipline in this matter. The relevant criteria of rehabilitation include: the nature and severity of the act; overall disciplinary record; number and variety of violations; mitigation evidence; time that has passed since the act occurred; and other evidence of rehabilitation.

In cases where substance abuse or dependence is established, substance abuse treatment is an important step toward rehabilitation. However, substance abuse treatment is only appropriate for individuals who are suffering from alcohol or drug dependence or abuse. The evidence did not establish that respondent is dependent on, or abuses, drugs or alcohol. Rather, respondent made an error in judgment on a single occasion outside of work. She has admitted her mistake and expressed sincere remorse. Respondent testified credibly that she will not consume non-prescribed controlled substances in the future. Respondent's rehabilitation is better demonstrated by a change of attitude than substance abuse treatment.

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.) Here, respondent has lived a law-abiding life and has earned a graduate education. She has chosen to follow in her father's footsteps in becoming a licensed pharmacist. Respondent is an honest individual and has been upfront with the Board concerning her error in judgment. Respondent has expressed sincere remorse and has taken this matter very seriously. She has atoned for her misconduct.

Respondent has had an excellent work history. Her past supervisor and coworker have never observed her to be under the influence of any substance at work; to the contrary, she proved to be a very reliable employee who routinely arrived at work 30 minutes early and was a cheerful team player who worked exceedingly well with customers.

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 misconduct, 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 is the appropriate discipline to be imposed upon respondent and is sufficient in this case to protect the public.

Costs of Enforcement

5. Complainant has requested that respondent be ordered to pay the Board the costs of investigating and enforcing this case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement have been found to be \$6,040. (Factual Finding 7.) The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining whether the costs reimbursement should be ordered.

Those factors include whether the licensee has been successful at hearing in obtaining a dismissal or reduction of the charges, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent has successfully argued for a substantial reduction of the discipline sought against her at hearing. The costs will be reduced to \$3,000.

ORDER

1. The written decision in this matter shall serve as a public reproof to respondent Katherine Mai Tram Blanzky, Pharmacy License No. RPH 68317.
2. Respondent shall reimburse the Board for its costs of investigation and enforcement in the amount of \$3,000 within 60 days of the date of this Decision.

DATED: April 18, 2016

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Accusation Against:
11 **KATHERINE MAI TRAM BLANZY**
12 **722 Gregory Drive**
13 **Lapeer, MI 48446**
14 **Pharmacist License No. RPH 68317**
15 Respondent.

Case No. 5428

ACCUSATION

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about October 15, 2012, the Board of Pharmacy issued Pharmacist License
23 Number RPH68317 to Katherine Mai Tram Blanzzy (Respondent). The Pharmacist License was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 March 31, 2016 unless renewed.

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

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

10
11 "(j) The violation of any of the statutes of this state, or any other state, or of the United
12 States regulating controlled substances and dangerous drugs.

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

17 8. Section 4059 of the Code states in pertinent part that:

18 A person may not furnish any dangerous drug, except upon the prescription of a physician,
19 dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device,
20 except upon the prescription of a physician, dentist, podiatrist, optometrist or veterinarian.

21 9. Section 4060 of the Code provides in pertinent part that:

22 "No person shall possess any controlled substance, except that furnished to a person upon
23 the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, furnished pursuant
24 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
25 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1."

26 10. Health and Safety Code Section 11170 provides:

27 "No person shall prescribe, administer, or furnish a controlled substance for himself."

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1 11. Section 490 of the Code states in pertinent part that:

2 A board may suspend or revoke a license on the ground that the licensee has been convicted
3 of a crime, if the crime is substantially related to the qualifications, functions, or duties of the
4 business or profession for which the license was issued. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
6 action that a board is permitted to take following the establishment of a conviction may be taken
7 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
8 or when an order granting probation is made suspending the imposition of sentence, irrespective
9 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

10 12. Section 493 of the Code states in pertinent part that:

11 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
12 the department pursuant to law to deny an application for a license or to suspend or revoke a
13 license or otherwise take disciplinary action against a person who holds a license, upon the
14 ground that the applicant or the licensee has been convicted of a crime substantially related to the
15 qualifications, functions, and duties of the licensee in question, the record of conviction of the
16 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
17 and the board may inquire into the circumstances surrounding the commission of the crime in
18 order to fix the degree of discipline or to determine if the conviction is substantially related to the
19 qualifications, functions, and duties of the licensee in question.

20 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
21 'registration.'"

22 13. California Code of Regulations, title 16, section 1770, states:

23 "For the purpose of denial, suspension, or revocation of a personal or facility license
24 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
25 crime or act shall be considered substantially related to the qualifications, functions or duties of a
26 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
27 licensee or registrant to perform the functions authorized by his license or registration in a manner
28 consistent with the public health, safety, or welfare."

1 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
2 administrative law judge to direct a licentiate found to have committed a violation or violations of
3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4 enforcement of the case.

5 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

6 15. Business and Professions Code section 4021 defines the term "Controlled Substance"
7 as "any substance listed in Chapter 2 (commenting with Section 11053) of Division 10 of the
8 Health and Safety Code."

9 16. Section 4022 of the Code states

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

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

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

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

19 17. **Marijuana**, is a Scheduled I controlled substance as designated by Health and Safety
20 Code section 11054(d)(20) and is a dangerous drug as defined by Business and Professions Code
21 section 4022, and is used for recreational activities.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession)**

3 18. Respondent is subject to disciplinary action under Business and Professions Code
4 section 4301, subdivisions (j) and (o) and section 4060 in that Respondent violated statutes
5 regulating controlled substances and dangerous drugs. Specifically, on or about October 1, 2014.
6 Respondent, who was then employed at Walgreen's Pharmacy, located at 151 E. Third Avenue in
7 San Mateo, California, tested positive on a random drug test at her place of employment for
8 marijuana.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unlawful Self-Administration)**

11 19. Respondent is subject to disciplinary action under Business and Professions Code
12 section 4301, subdivisions (h) and Health and Safety Code section 11170 in that she furnished
13 and/or administered to herself controlled substances. Specifically, on or about October 1, 2014.
14 Respondent, who was then employed at Walgreen's Pharmacy, located at 151 E. Third Avenue in
15 San Mateo, California, tested positive on a random drug test at her place of employment for
16 marijuana.

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PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 68317, issued to Katherine Mai Tram Blanz;
2. Ordering Katherine Mai Tram Blanz to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

8/13/15

Virginia Herold

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

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