

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

In the Matter of the Accusation Against:

AARONAE RIANA SMITH

Pharmacy Technician Registration
No. TCH 140036

Respondent.

Case No. 5836

OAH No. 2016071039

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 January 11, 2017.

It is so ORDERED on December 12, 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 Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on October 17, 2016, in Oakland, California.

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

Evan C. Greenberg, Attorney at Law, represented respondent Aaronae Riana Smith, who was present throughout the administrative hearing.

The matter was submitted for decision on October 17, 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 June 17, 2014, the Board issued Pharmacy Technician Registration No. TCH 140036 to Aaronae Riana Smith (respondent). The license was active at all times relevant here and will expire on February 28, 2018, unless renewed.

Cause for Discipline

3. Respondent's family member worked at the United States Postal Service. From December 2012 to December 2013, this family member targeted mail that contained

valuables, such as credit cards, debit cards, check cards, and gift cards. The family member would steal the mail and give the contents to respondent, or tell respondent where the mail had been delivered so respondent could steal it. Respondent used the valuables to make at least 126 fraudulent purchases and fraudulent cash withdrawals totaling over \$12,000, and attempted three other fraudulent purchases.

4. On August 19, 2015, in *United States v. Aaronae Riana Smith*, Northern District of California, respondent pled guilty to obstruction of mails, 18 United States Code, section 1701, a misdemeanor. She was sentenced to two years' probation, 60 days' intermittent confinement (every other weekend in jail), location monitoring for two months, 150 hours' community service, and \$12,615.96 restitution. She has completed the two months monitoring, but has served about half of her intermittent confinement and is making payments on the restitution. She has not completed her community service.

5. Respondent has never been employed as a Pharmacy Technician. She is presently employed with Compass Transportation as a bus driver. She did not present a letter from her employer. Pharmacy Technicians have access to sensitive information including credit card and health information, as well as access to controlled substances and dangerous drugs.

6. Respondent has no prior criminal history or disciplinary record. She was 20 years old at the time and participated in the fraudulent scheme from December 11, 2012 to December 24, 2013. While respondent has made an effort toward rehabilitation, it is not sufficient to warrant a pharmacy technician registration, even on probation, at this time.

7. Respondent did not present any letters attesting to her good character or that she has changed her attitude.

Costs of Investigation and Enforcement

8. The Board has incurred \$4,115 in investigation, and enforcement costs. The amount of investigation and prosecution costs incurred by the Board is reasonable.

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 (f), authorizes the Board to impose discipline on a licensee who commits an act involving moral turpitude,

dishonesty, fraud, deceit or corruption. As set forth in Factual Findings 3 and 4, cause for discipline exists pursuant to Business and Professions Code section 4301, subdivisions (f).

3. Business and Professions Code sections 490, subdivision (a), and 4301, subdivision (l), authorizes the Board to impose discipline on a licensee who has been convicted of a substantially related crime. As set forth in Factual Findings 3 and 4, cause for discipline exists pursuant to Business and Professions Code sections 490, subdivision (a), and 4301, subdivision (l).

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.

Respondent has no work history. She presented no evidence that she is trusted by her employer. Respondent did not present sufficient evidence to warrant a pharmacy technician registration even on probationary terms.

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 \$4,115. (Factual Finding 8.) 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 did not object to the costs.

ORDER

1. Pharmacy technician registration No. TCH 140036 is revoked pursuant to Legal Conclusions 2, and 3, separately and jointly.
2. Respondent is ordered to pay the Board \$4,115 for the cost of investigation and enforcement.

DATED: November 1, 2016

DocuSigned by:

Ruth S. Astle

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RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:
12 **AARONAE RIANA SMITH**
13 **1505 Roosevelt Avenue, #3**
Richmond, CA 94801
14 **Pharmacy Technician Registration No.**
15 **TCH 140036,**
16 Respondent.

Case No. 5836

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 June 17, 2014, the Board issued Pharmacy Technician Registration
23 No. TCH 140036 to respondent Aaronae Riana Smith. This pharmacy technician registration was
24 in full force and effect at all times relevant to the charges brought in this accusation and will
25 expire on February 28, 2018, unless renewed.

26 **JURISDICTION**

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

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4. Section 4011 states:

“The board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).”

5. Section 4300 states in part:

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

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

“(1) Suspending judgment.

“(2) Placing him or her upon probation.

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

“(4) Revoking his or her license.

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

6. Section 4300.1 states:

“The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.”

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 states in part:

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

...

“(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or

1 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
2 whether the act is a felony or misdemeanor or not.

3 . . .

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

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

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

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1 **COST RECOVERY**

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

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

8 **FACTUAL ALLEGATIONS**

9 10. Respondent's family member worked at the United States Postal Service. From
10 approximately December 2012 to December 2013, this family member targeted mail that
11 contained valuables, such as credit cards, debit cards, check cards, and gift cards. This family
12 member would steal the mail herself and give the contents to respondent, or tell respondent where
13 the mail had been delivered so respondent could steal it. Respondent used the valuables to make
14 at least approximately 126 fraudulent purchases and fraudulent cash withdrawals totaling over
15 \$12,000, and attempted approximately 3 other fraudulent purchases.

16 11. On August 19, 2015, in *United States v. Aaronae Riana Smith*, Northern District of
17 California Case No. 15-CR-033 DMR, respondent pled guilty to obstruction of mails (18 U.S.C.
18 § 1701), a misdemeanor. Her sentence included two years' probation, 60 days' intermittent
19 confinement, 150 hours' community service, and \$12,615.96 restitution.

20 **CAUSES FOR DISCIPLINE**

21 **First Cause for Discipline**
22 **Unprofessional Conduct – Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or**
23 **Corruption**
24 **Section 4301, subdivision (f)**

25 12. The allegations of paragraphs 10-11 are realleged and incorporated by reference as
26 if fully set forth.

27 13. Respondent has subjected her pharmacy technician registration to discipline for the
28 unprofessional conduct of committing an act involving moral turpitude, dishonesty, fraud, deceit,
or corruption (Bus. & Prof. Code, § 4301, subd. (f)). Respondent received stolen mail and stole

1 mail herself, and used the valuables in the mail to make at least approximately 126 fraudulent
2 purchases and fraudulent cash withdrawals totaling over \$12,000, and attempted approximately 3
3 other fraudulent purchases.

4
5 **Second Cause for Discipline**
Unprofessional Conduct – Conviction
Section 4301, subdivision (I)

6 14. The allegations of paragraphs 10-11 are realleged and incorporated by reference as
7 if fully set forth.

8 15. Respondent has subjected her pharmacy technician registration to discipline for the
9 unprofessional conduct of being convicted (Bus. & Prof. Code, § 4301, subd. (I)). On August 19,
10 2015, in *United States v. Aaronae Riana Smith*, Northern District of California Case No.
11 15-CR-033 DMR, respondent pled guilty to obstruction of mails (18 U.S.C. § 1701), a
12 misdemeanor.

13 **PRAYER**

14 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
15 accusation, and that following the hearing, the Board issues a decision:

16 1. Revoking or suspending Pharmacist Technician Registration No. TCH 140036
17 issued to respondent;

18 2. Ordering respondent under to Business and Professions Code section 125.3 to pay
19 the Board the reasonable costs of the investigation and enforcement of this case; and

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

21 DATED: 6/10/16

Virginia Herold

22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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