

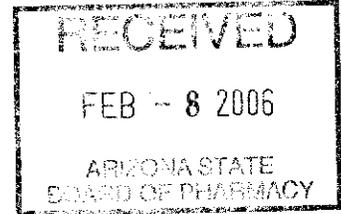
Office of Administrative Hearings

1400 West Washington, Suite 101 - Phoenix, Arizona 85007
Telephone (602)-542-9826 FAX (602)-542-9827

Janet Napolitano
Governor

Cliff Vanell
Director

October 18, 2005



Hal Wand, Executive Director
Pharmacy Board
4425 West Olive Ave, Suite 140
Glendale, AZ 85302

Re: 06F-001-PHB

In the Matter of:

Linda E. Flores,

Holder of License No. 5055
for Pharmacy Technician,

In the State of Arizona.

Dear Mr. Wand:

Please find the decision of the Office of Administrative Hearings for the above entitled matter.

Sincerely,



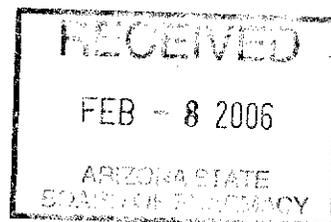
Cliff J. Vanell
Director



Mission Statement: We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

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
29
30

IN THE OFFICE OF ADMINISTRATIVE HEARINGS



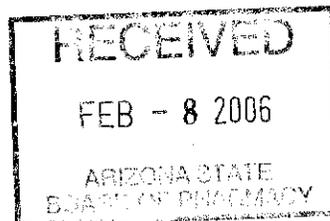
In the Matter of:

No. 06F-001-PHB

Linda E. Flores,

ADMINISTRATIVE
LAW JUDGE DECISION

Holder of License No. 5055
for Pharmacy Technician,
In the State of Arizona,



Respondent

HEARING: September 28, 2005

APPEARANCES: The Arizona State Board of Pharmacy ("the Board") was represented by Assistant Attorney General Roberto Pulver. Linda E. Flores ("Respondent") failed to appear.

ADMINISTRATIVE LAW JUDGE: Michael L. Barth

FINDINGS OF FACT

1. The above-captioned matter came on for hearing to determine whether grounds exist to take disciplinary action regarding License No. 5055.
2. The Board is the duly constituted authority for licensing and regulating the practice of pharmacy in the State of Arizona.
3. Respondent is the holder of License No. 5055.
4. Despite having been provided notice of the hearing as required by law, Respondent failed to appear.
5. Based on the credible and uncontroverted testimony of John Griggs, the Director of the Banner Thunderbird Medical Center Pharmacy ("Banner Pharmacy"), in combination with Exhibits 1-6, this tribunal makes the following findings:
 - a. Respondent worked as a pharmacy technician at Banner Pharmacy from June 17, 2002 to November 5, 2004.

1 b. Due to reasonable suspicions that Respondent was engaged in
2 tampering with and/or diverting of controlled substances in the custody of Banner
3 Pharmacy while on duty, Banner Pharmacy requested that Respondent undergo a drug
4 screen to which Respondent voluntarily submitted.

5 c. While on duty, Respondent tested positive for the barbiturate,
6 butalbital, a component of Fioricet, one of the controlled substances of which
7 Respondent was suspected of diverting.

8 d. Respondent was unable to present independent evidence of having
9 been prescribed a barbituate.

10 e. As a result of the drug screen being positive for a substance
11 requiring a prescription and Respondent's inability to present independent proof of that
12 substance being prescribed, Banner Pharmacy terminated Respondent's employment
13 and reported her to the Board.

14 6. Based on the credible and uncontroverted testimony of Dean Wright, a
15 Compliance Officer for the Board and a licensed pharmacist, this tribunal finds the
16 following:

17 a. In being under the influence of a barbiturate, a prescription-only
18 drug, for which she did not have a valid prescription while on duty in 2004, Respondent
19 was involved in dispensing a prescription-only drug in violation of State law relating to
20 the manufacture and distribution of prescription-only drugs or controlled substance
21 drugs.

22 b. Butalbital can cause drowsiness, dizziness and vertigo and,
23 therefore, impair one's ability to practice pharmacy safely.

24 7. The Board did not allege tampering or diverting controlled substances in
25 the custody of Banner Pharmacy as grounds for disciplining Respondent's license but
26 requested that the alleged tampering and diverting of controlled substances be
27 considered by this tribunal as an aggravating factor in assessing discipline.

28 8. Inasmuch as the alleged tampering and diverting of controlled substances
29 in the custody of Banner Pharmacy by Respondent was not cited by the Board as
30 grounds for disciplining Respondent's license, this tribunal finds that it would be
fundamentally unfair to consider the alleged conduct as an aggravating factor in

1 assessing discipline. In any event, this tribunal finds that the unlawful use of a
2 prescription drug by a pharmacy technician while on duty, given the dangers that such
3 use poses to the public, constitutes a sufficient ground upon which a pharmacy
4 technician license may be revoked.

5 CONCLUSIONS OF LAW

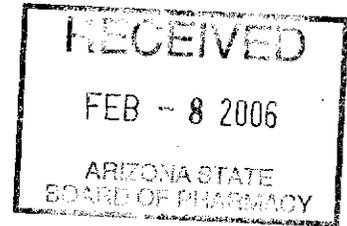
6 1. The Board has jurisdiction over this matter. A.R.S. §§ 32-1901 *et seq.*

7 2. The burden of proof generally at an administrative hearing falls to the
8 party asserting a claim, right or entitlement or seeking to impose a penalty. A.A.C. R2-
9 19-119(B). Further, the standard of proof is that of the "preponderance of the
10 evidence." *Smith v. Arizona Department of Transportation*, 146 Ariz. 430, 706 P.2d 756
11 (App. 1985); *see also* A.A.C. R2-19-119(A). This standard is not met unless the
12 evidence is sufficient to persuade the finder of fact that the proposition is "more likely
13 true than not." *In re Arnold and Baker Farms*, 177 Bankr. 648, 654 (Bankr. 9th Cir.
14 1994). The evidence taken as a whole must convince the decision maker that the party
15 who bears the burden, in this case the Board, is more probably correct on the issues in
16 dispute.

17 3. Observing the aforementioned standard, the Board demonstrated, as will
18 be discussed below, that grounds existed to take disciplinary action regarding License
19 No. 5055.

20 4. Being under the influence of a barbituate for which she did not have a
21 valid prescription while on duty in 2004, Respondent committed conduct for which her
22 license may be disciplined, including revocation of her license, by the Board. A.R.S. §
23 32-1927.01(A)(3) (effective April 17, 2003 but repealed by Laws 2005, Ch. 241 § 9).

24 5. Being under the influence of a barbituate for which she did not have a
25 valid prescription while on duty in 2004, Respondent dispensed a prescription-only drug
26 in violation of State law. A.R.S. § 32-1968. In violating State law relating to the
27 manufacture and distribution of prescription-only drugs or controlled substance drugs,
28 Respondent committed conduct for which her license may be disciplined, including
29 revocation of her license, by the Board. A.R.S. § 32-1927.01(A)(9)(effective April 17,
30 2003 but repealed by Laws 2005, Ch. 241 § 9); A.R.S. § 32-1927.01(B)(1).



RECOMMENDED ORDER

In view of the foregoing, it is recommended that commencing on the effective date of the Order entered in this matter that License No. 5055 be revoked.

Done this day, October 17, 2005.

Michael L. Barth
Administrative Law Judge

Original transmitted by mail this
18 day of October, 2005, to:

Pharmacy Board
Hal Wand
4425 West Olive Ave, Suite 140
Glendale, AZ 85302

By