

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

In the Matter of the Accusation Against:

JENNIFER ANN BRIDGES,

Original Pharmacy Technician Registration No.
TCH 60386

Respondent.

Case No. 5234

OAH No. 2015010454

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 April 4, 2016.

It is so ORDERED on March 3, 2016

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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CORRECTED PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on November 2, 2015, in Sacramento, California.

Stephanie Alamo-Latif, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Respondent Jennifer Ann Bridges represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 2, 2015.

SUMMARY

Complainant seeks to discipline respondent's registration based on her numerous violations of the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.), each of which arose out of her theft of phentermine tablets and capsules from her employer while working in her licensed capacity. Cause exists to discipline her registration. Respondent did not present sufficient evidence to demonstrate she is capable of performing her licensed duties in a manner consistent with public health, safety, and welfare, even on a probationary basis. Therefore, her original pharmacy technician registration should be revoked.

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FACTUAL FINDINGS

Procedural Background

1. The Board issued Original Pharmacy Technician Registration Number TCH 60386 to respondent on January 11, 2005. The registration expires January 31, 2017, unless renewed or revoked. There is no history of prior discipline of the registration.

2. Complainant signed the Accusation on September 14, 2014, solely in her official capacity. The Accusation seeks to discipline respondent's registration for her engaging in acts involving moral turpitude, dishonesty, fraud, deceit, or corruption; unlawful possession of a controlled substance; unlawful self-administration of a controlled substance; furnishing of a dangerous drug; violation of statutes governing controlled substances;¹ and violation of laws governing pharmacy, all of which arose out of her theft of phentermine tablets and capsules from her employer while working in a licensed capacity.

Respondent's Employment at Walgreens

3. Respondent began working at Walgreens in Citrus Heights, California, as a cashier in the retail section of the store on July 13, 2001. At some point, she was offered the opportunity to work in the pharmacy, but she declined because she did not "trust" herself around controlled substances for the reasons explained below. In approximately 2005, however, she was persuaded to transfer to the pharmacy, where she continued to work until her termination on October 3, 2013, which is discussed below. At hearing, respondent readily admitted "I probably put the lives of everyone around me in danger" during her last six months of employment.

Respondent's Theft of Phentermine

4. Between July 19, 2013 and October 3, 2013, store management conducted an investigation into phentermine tablets and capsules that were missing from the pharmacy's stock and not accounted for in the pharmacy's records.² The loss prevention manager installed additional security cameras to monitor the area of the pharmacy in which phentermine was stored.

Video footage from September 3, 20, and 25, 2013, showed respondent going to the shelf where phentermine was stored, taking a bottle from the shelf, opening the bottle and pouring its contents into her hand, putting her hand in her pocket before closing the bottle

¹ As explained further below, the fifth cause for discipline simply re-alleges the legal and factual bases alleged in the second, third, and fourth causes for discipline and, therefore, does not constitute a separate basis for discipline.

² Phentermine is a Schedule IV controlled substance (Health & Saf. Code, § 11057, subd. (f)(4)) that is commonly prescribed for weight loss.

and returning it to the shelf, and then walking out of view of the cameras. When confronted with this evidence by the loss prevention manager, respondent immediately admitted to stealing two bottles of phentermine tablets and one bottle of phentermine capsules for self-use between approximately April and October 2013, and signed a handwritten statement to that effect in which she agreed to reimburse Walgreens for the cost of the medicine. She also admitted she did not have a prescription for the medication at the time she stole it. Respondent's employment with Walgreens was terminated, effective October 3, 2013.

Respondent's Testimony

5. At hearing, respondent testified openly and candidly about her theft of phentermine from Walgreens and her history of abusing controlled substances. By way of background, her biological parents voluntarily put her up for adoption when she was almost six years old (she was born in 1977) because of their own problems with abusing illegal substances. She has not had any contact with her biological parents since she was adopted, and only recently learned they are both deceased.

Respondent began experimenting with methamphetamine during the summer when she was 17 years old. She attributed her use to childhood curiosity, and stopped on her own at the end of the summer. She began using methamphetamine "pretty steady" when she was 18 or 19 years old, and did not stop until she learned she was pregnant with her son when she was 22 years old. She explained at hearing, "there was no question I had to stop," and she did so without any treatment or assistance.

In 2009, respondent's stepbrother, who was adopted when he was four days old and she was 10 years old, passed away, and she had a very difficult time dealing with her loss. She previously had a prescription for phentermine to help lose weight after the birth of one of her children, so she was already familiar with the medication. And since she had unfettered access to it as a pharmacy technician at Walgreens, she stole phentermine while at work and ingested it to help her cope with her loss (the evidence did not establish whether she ingested the medicine while on duty, or kept it until after she was off duty and then ingested it). When asked at hearing how much phentermine was stolen, respondent candidly stated "a lot." She went on to explain she took at least three bottles (she estimated there were 100 pills in a bottle), and shortly before she was caught "it felt like every day [she would] take five to 10 pills."

6. Since being terminated from Walgreens, respondent has not applied for any jobs that would provide her access to controlled substances because she recognizes her proclivity towards abusing controlled substances when given the opportunity. She has been working for Blue Shield for a "little over a year," answering telephone calls from medical providers and pharmacies seeking prior authorization for prescriptions. She has no access to controlled substances in her current position, and explained she would have surrendered her registration if it was not required for her job.

7. Respondent currently lives with her husband, their two teenage children, and her mother-in-law in a home respondent and her husband purchased. She has been participating in counseling to help her learn to deal with the loss of her stepbrother and conquer her proclivity towards abusing controlled substances to help cope with the stressors of life, which she described as an “ongoing process that I don’t know will ever end.” Respondent recognizes the value of her therapy sessions, but admitted she has been able to attend only 10 sessions thus far because her therapist is not a preferred provider with her insurance plan. She expressed her commitment to continuing counseling with a different therapist if she loses coverage for her current one.

Respondent conceded she has not participated in any substance abuse treatment other than counseling, even though her therapist and husband have strongly recommended she attend Narcotics Anonymous meetings and she agrees attending such meetings would be helpful. She explained she drives by a church every day that hosts Narcotics Anonymous meetings. But she also explained, “honestly, it’s being scared,” as her reason for not attending such meetings. Respondent has the full support of her mother-in-law, husband, and their two children in her efforts to overcome her substance abuse problems. Her husband has been sober from controlled substances for more than 16 years, and her mother has been sober from alcohol for at least 15 years. Other than those for which she has had a valid prescription, respondent has been sober from controlled substances since October 3, 2013.

The Board's Disciplinary Guidelines

8. The Board has adopted “Disciplinary Guidelines (Rev. 10/2007)” (Guidelines), which sets forth factors to be considered in reaching a decision on a disciplinary action. (Cal. Code Regs., tit. 16, § 1760.) The Guidelines divides the various statutory and regulatory provisions pertaining to pharmacy technicians into three different categories – Category 1, Category II, and Category III – and provides a recommended minimum and maximum discipline for each category.

Each of respondent’s violations constitutes a Category III violation, except for the violations of Business and Professions Code section 4301, subdivisions (f) and (h), which are identified as Category II violations.³ It is appropriate to treat each of respondent’s violations of the Pharmacy Law as a Category III violation, given the total number of violations committed. The recommended penalty for a Category III violation is:

Minimum: Revocation; Revocation stayed, 90 days actual suspension, three years probation. All standard terms and conditions shall be included and optional terms and conditions as appropriate.

³ The Guidelines identify a violation of Business and Professions Code section 4301, subdivision (j), as both a Category II violation and a Category III violation, without specifying how to differentiate between the two. Given the total number of violations committed, it is appropriate to treat each of those violations as a Category III violation.

Maximum: Revocation

The Guidelines provide the following regarding determining the appropriate level of discipline to impose:

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an immediate penalty is to be imposed any given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

9. The evidence established that respondent violated numerous provisions of the Pharmacy Law by stealing phentermine tablets and capsules from Walgreens for her own personal use. She did not have a valid prescription for the medication at that time. While there was no evidence her conduct caused actual harm to the public or any consumer, the risk of her having dispensed controlled substances while under the influence had the potential to cause significant harm to the public and a consumer.

Respondent has no history of prior warnings or discipline by the Board. She readily admitted her wrongdoing when confronted by the loss prevention manager at Walgreens and at hearing. She testified openly and honestly about her history of substance abuse, and candidly admitted she cannot be trusted, and does not trust herself, to be around controlled substances, at least at her current stage of treatment. She has taken steps to avoid being around controlled substances, such as not accepting employment that would give her access to controlled substances.

Respondent is currently attending counseling to help her overcome her abuse of controlled substances and to learn to handle life's stressors without resorting to controlled substances. She has not attended any Narcotics Anonymous meetings or any other type of support group, even though it has been recommended that she do so and she recognizes the value of attending such meetings. Respondent's family is committed to helping her to defeat her addiction to controlled substances.

Summary

10. Cause exists to discipline respondent's pharmacy technician registration for the reasons explained in the Legal Conclusions. When considering the Guidelines and all the evidence admitted at hearing, respondent did not introduce sufficient evidence to establish her continued ability to perform the duties of a pharmacy technician in a manner consistent with public health, safety, and welfare, even on a probationary basis. She has been abusing controlled substances sporadically for 21 years, at times "pretty steady." She is currently attending counseling to deal with her addiction and related issues, but has been resistant to attending substance abuse support groups or seeking further treatment, despite admitting doing so would be beneficial. Additionally, respondent does not trust herself around controlled substances. Therefore, her original pharmacy technician registration should be revoked.

Costs of Investigation and Enforcement

11. Complainant has requested costs of investigation and enforcement in the total amount of \$4,861 pursuant to Business and Professions Code section 125.3. This amount consists of costs incurred directly by the Board (\$1,686), as well as costs incurred by the Office of the Attorney General and billed to the Board (\$3,175). At hearing, complainant introduced a Certification of Investigative Costs: Declaration of Hilda Nip in support of the costs incurred directly by the Board. The Certification provides a general description of the tasks performed, the time spent on those tasks, and the method of calculating the costs

incurred by the Board, as required by California Code of Regulations, title 1, section 1042, subdivision (b)(1).

Complainant also introduced a Certification of Prosecution Costs: Declaration of Stephanie Alamo-Latif, which request costs in the amount of \$3,175. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the total amount of \$3,175.

Respondent did not object to any of complainant's evidence of costs of investigation and enforcement. However, she introduced evidence of her limited ability to pay such costs. Specifically, she and her husband have little, if any, income left over each month after paying their living expenses. They have no reserves. Additionally, each of the statutory bases for discipline alleged arose out of respondent's theft of phentermine from her employer while on duty. One of those causes for discipline simply re-alleges the previous and, therefore, does not constitute a legal basis for discipline as explained further below. Respondent's actions were captured on video, and she immediately confessed to her wrongdoing once confronted with such evidence. She also prepared and signed a handwritten statement confessing to her actions. Respondent stipulated to a factual and legal basis for discipline at hearing.

Under the particular circumstances of this matter, costs of investigation and enforcement in the amount of \$2,500 are reasonable as explained further in Legal Conclusion 9 below.

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Two different standards of proof apply in license discipline proceedings: the clear and convincing to a reasonable certainty standard, and the preponderance of the evidence standard. And the courts make "a distinction between professional licenses, such as those held by doctors [citation], lawyers [citation], and real estate brokers [citation] on the one hand, and nonprofessional or occupational licenses, such as those held by food processors [citation] and vehicle salespersons [citation], on the other hand," in determining which standard applies. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) The clear and convincing standard applies when disciplining the former types of licenses, whereas the preponderance of the evidence standard applies when disciplining the latter types. (*Ibid.*)

Rationalizing the basis for applying a different standard depending on the type of license subject to discipline, the appellate court in *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, explained:

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Because a professional license represents the licensee's fulfillment of extensive educational, training and testing requirements, the licensee has an extremely strong interest in retaining the license that he or she has expended so much effort in obtaining. It makes sense to require that a higher standard of proof be met in a proceeding to revoke or suspend such a license. The same cannot be said for a licensee's interest in retaining a [nonprofessional] license.

(*Id.*, at p. 1894.)

Business and Professions Code section 4202 provides the following regarding the issuance of a pharmacy technician registration:

- (a) The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a general educational development certificate equivalent, and meets any one of the following requirements:
 - (1) Has obtained an associate's degree in pharmacy technology.
 - (2) Has completed a course of training specified by the board.
 - (3) Has graduated from a school of pharmacy recognized by the board.
 - (4) Is certified by the Pharmacy Technician Certification Board.
- (b) The board shall adopt regulations pursuant to this section for the licensure of pharmacy technicians and for the specification of training courses as set out in paragraph (2) of subdivision (a). Proof of the qualifications of any applicant for licensure as a pharmacy technician shall be made to the satisfaction of the board and shall be substantiated by any evidence required by the board.
- (c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.
- (d) The board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

(e) Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician license shall be returned to the board within 15 days.

Based upon the above, complainant has the burden of proving the existence of cause to discipline respondent's pharmacy technician registration, and she must do so by clear and convincing evidence to a reasonable certainty. Clear and convincing evidence requires a finding of high probability. The evidence must be so clear that it leaves no substantial doubt. The evidence must be strong enough to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594; *In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Cause for Discipline

2. A pharmacy technician registration may be disciplined if the holder has committed unprofessional conduct. (Bus. & Prof. Code, § 4301.) "Unprofessional conduct" includes "the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not." (Bus. & Prof. Code, § 4301, subd. (f).) Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, and corruption each time she took phentermine tablets or capsules from Walgreens. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (f).

3. "Unprofessional conduct" also includes respondent administering to herself a controlled substance or using any dangerous drug or alcoholic beverage to an extent, or in a manner that is dangerous or injurious to herself, to another licensee, or to another person or the public, or to an extent that her use impairs her ability to perform her duties as a pharmacy technician in a manner consistent with public health, safety, and welfare. (Bus. & Prof. Code, § 4301, subd. (h).) Respondent used phentermine, a Schedule IV controlled substance and a dangerous drug as defined by Business and Professions Code section 4022, to an extent dangerous to herself in that she ingested at least 300 pills over a six-month period, even though she did not have a prescription. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (h).

4. "Unprofessional conduct" also includes "the violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs." (Bus. & Prof. Code, § 4301, subd. (j).) Business and Professions Code section 4060 prohibits a person from possessing any controlled substance, except pursuant to a valid prescription. Health and Safety Code, section 11350, subdivision (a), prohibits the same. Respondent possessed phentermine on multiple occasions without a valid prescription. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (j), as that

statute relates to Business and Professions Code section 4060 and Health and Safety Code section 11350, subdivision (a).

5. Business and Professions Code section 4059, subdivision (a), prohibits a person from furnishing a dangerous drug, except pursuant to a valid prescription. Health and Safety Code section 11170 precludes a person from prescribing, administering, or furnishing a controlled substance to herself. Respondent furnished phentermine to herself without a valid prescription on numerous occasions. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (j), as that statute relates to Business and Professions Code section 4059, subdivision (a), and Health and Safety Code section 11170.⁴

6. "Unprofessional conduct" also includes the violation or attempted violation of the Pharmacy Law or of the applicable federal and state laws and regulations governing pharmacy. (Bus. & Prof. Code, § 4301, subd. (o).) Each cause for discipline discussed in Legal Conclusions 2 through 5 constitutes separate cause to discipline respondent's original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (o).

Conclusion

7. Cause exists to discipline respondent's original pharmacy technician registration for the reasons discussed in Legal Conclusions 2 through 6, individually and collectively. When all the evidence is considered, respondent did not introduce sufficient evidence to establish it would not be contrary to public health, safety, or welfare to allow her to continue performing her licensed duties, even on a probationary basis, for the reasons explained in Factual Findings 8 through 10. Therefore, her original pharmacy technician registration should be revoked.

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⁴ As the fifth cause for discipline, complainant alleged, "respondent is subject to discipline under Code section 4301, subdivision (j), in that Respondent violated statutes regulating controlled substances and dangerous drugs, including Code section 4059, as set forth above in paragraph 20, Code section 4060, as set forth in paragraph 18, and Health and Safety Code section 11350, as set forth above in paragraph 18, and Health and Safety Code section 11170, as set forth above in paragraphs 19 and 20. But cause for discipline based on those allegations was previously discussed in Legal Conclusions 3 through 5, and no separate legal basis for cause exists based on the same allegations.

Award of Costs

8. Business and Professions Code section 125.3, subdivision (a), states:

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

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

9. After considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of \$2,500 are reasonable and are awarded as set forth in the Order below.

ORDER

Original Pharmacy Technician Registration Number TCH 60386 issued to respondent Jennifer Ann Bridges is REVOKED.

Respondent shall pay to the Board the costs of prosecution and enforcement in the amount of \$2,500.

DATED: February 10, 2016

DocuSigned by:
Coren D. Wong
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COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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Maximum: Revocation

The Guidelines provide the following regarding determining the appropriate level of discipline to impose:

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an immediate penalty is to be imposed any given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

9. The evidence established that respondent violated numerous provisions of the Pharmacy Law by stealing phentermine tablets and capsules from Walgreens for her own personal use. She did not have a valid prescription for the medication at that time. While there was no evidence her conduct caused actual harm to the public or any consumer, the risk of her having dispensed controlled substances while under the influence had the potential to cause significant harm to the public and a consumer.

Respondent has no history of prior warnings or discipline by the Board. She readily admitted her wrongdoing when confronted by the loss prevention manager at Walgreens and at hearing. She testified openly and honestly about her history of substance abuse, and candidly admitted she cannot be trusted, and does not trust herself, to be around controlled substances, at least at her current stage of treatment. She has taken steps to avoid being around controlled substances, such as not accepting employment that would give her access to controlled substances.

Respondent is currently attending counseling to help her overcome her abuse of controlled substances and to learn to handle life's stressors without resorting to controlled substances. She has not attended any Narcotics Anonymous meetings or any other type of support group, even though it has been recommended that she do so and she recognizes the value of attending such meetings. Respondent's family is committed to helping her to defeat her addiction to controlled substances.

Summary

10. Cause exists to discipline respondent's pharmacy technician registration for the reasons explained in the Legal Conclusions. When considering the Guidelines and all the evidence admitted at hearing, respondent did not introduce sufficient evidence to establish her continued ability to perform the duties of a pharmacy technician in a manner consistent with public health, safety, and welfare, even on a probationary basis. She has been abusing controlled substances sporadically for 21 years, at times "pretty steady." She is currently attending counseling to deal with her addiction and related issues, but has been resistant to attending substance abuse support groups or seeking further treatment, despite admitting doing so would be beneficial. Additionally, respondent does not trust herself around controlled substances. Therefore, her original pharmacy technician registration should be revoked.

Costs of Investigation and Enforcement

11. Complainant has requested costs of investigation and enforcement in the total amount of \$4,861 pursuant to Business and Professions Code section 125.3. This amount consists of costs incurred directly by the Board (\$1,686), as well as costs incurred by the Office of the Attorney General and billed to the Board (\$3,175). At hearing, complainant introduced a Certification of Investigative Costs: Declaration of Hilda Nip in support of the costs incurred directly by the Board. The Certification provides a general description of the tasks performed, the time spent on those tasks, and the method of calculating the costs

incurred by the Board, as required by California Code of Regulations, title 1, section 1042, subdivision (b)(1).

Complainant also introduced a Certification of Prosecution Costs: Declaration of Stephanie Alamo-Latif, which request costs in the amount of \$3,175. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the total amount of \$3,175.

Respondent did not object to any of complainant's evidence of costs of investigation and enforcement. However, she introduced evidence of her limited ability to pay such costs. Specifically, she and her husband have little, if any, income left over each month after paying their living expenses. They have no reserves. Additionally, each of the statutory bases for discipline alleged arose out of respondent's theft of phentermine from her employer while on duty. One of those causes for discipline simply re-alleges the previous and, therefore, does not constitute a legal basis for discipline as explained further below. Respondent's actions were captured on video, and she immediately confessed to her wrongdoing once confronted with such evidence. She also prepared and signed a handwritten statement confessing to her actions. Respondent stipulated to a factual and legal basis for discipline at hearing.

Under the particular circumstances of this matter, costs of investigation and enforcement in the amount of \$2,500 are reasonable as explained further in Legal Conclusion 9 below.

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Two different standards of proof apply in license discipline proceedings: the clear and convincing to a reasonable certainty standard, and the preponderance of the evidence standard. And the courts make "a distinction between professional licenses, such as those held by doctors [citation], lawyers [citation], and real estate brokers [citation] on the one hand, and nonprofessional or occupational licenses, such as those held by food processors [citation] and vehicle salespersons [citation], on the other hand," in determining which standard applies. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) The clear and convincing standard applies when disciplining the former types of licenses, whereas the preponderance of the evidence standard applies when disciplining the latter types. (*Ibid.*)

Rationalizing the basis for applying a different standard depending on the type of license subject to discipline, the appellate court in *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, explained:

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Because a professional license represents the licensee's fulfillment of extensive educational, training and testing requirements, the licensee has an extremely strong interest in retaining the license that he or she has expended so much effort in obtaining. It makes sense to require that a higher standard of proof be met in a proceeding to revoke or suspend such a license. The same cannot be said for a licensee's interest in retaining a [nonprofessional] license.

(*Id.*, at p. 1894.)

Business and Professions Code section 4202 provides the following regarding the issuance of a pharmacy technician registration:

(a) The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a general educational development certificate equivalent, and meets any one of the following requirements:

- (1) Has obtained an associate's degree in pharmacy technology.
- (2) Has completed a course of training specified by the board.
- (3) Has graduated from a school of pharmacy recognized by the board.
- (4) Is certified by the Pharmacy Technician Certification Board.

(b) The board shall adopt regulations pursuant to this section for the licensure of pharmacy technicians and for the specification of training courses as set out in paragraph (2) of subdivision (a). Proof of the qualifications of any applicant for licensure as a pharmacy technician shall be made to the satisfaction of the board and shall be substantiated by any evidence required by the board.

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

(e) Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician license shall be returned to the board within 15 days.

Based upon the above, complainant has the burden of proving the existence of cause to discipline respondent's pharmacy technician registration, and she must do so by clear and convincing evidence to a reasonable certainty. Clear and convincing evidence requires a finding of high probability. The evidence must be so clear that it leaves no substantial doubt. The evidence must be strong enough to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594; *In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Cause for Discipline

2. A pharmacy technician registration may be disciplined if the holder has committed unprofessional conduct. (Bus. & Prof. Code, § 4301.) "Unprofessional conduct" includes "the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not." (Bus. & Prof. Code, § 4301, subd. (f).) Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, and corruption each time she took phentermine tablets or capsules from Walgreens. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (f).

3. "Unprofessional conduct" also includes respondent administering to herself a controlled substance or using any dangerous drug or alcoholic beverage to an extent, or in a manner that is dangerous or injurious to herself, to another licensee, or to another person or the public, or to an extent that her use impairs her ability to perform her duties as a pharmacy technician in a manner consistent with public health, safety, and welfare. (Bus. & Prof. Code, § 4301, subd. (h).) Respondent used phentermine, a Schedule IV controlled substance and a dangerous drug as defined by Business and Professions Code section 4022, to an extent dangerous to herself in that she ingested at least 300 pills over a six-month period, even though she did not have a prescription. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (h).

4. "Unprofessional conduct" also includes "the violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs." (Bus. & Prof. Code, § 4301, subd. (j).) Business and Professions Code section 4060 prohibits a person from possessing any controlled substance, except pursuant to a valid prescription. Health and Safety Code, section 11350, subdivision (a), prohibits the same. Respondent possessed phentermine on multiple occasions without a valid prescription. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (j), as that

statute relates to Business and Professions Code section 4060 and Health and Safety Code section 11350, subdivision (a).

5. Business and Professions Code section 4059, subdivision (a), prohibits a person from furnishing a dangerous drug, except pursuant to a valid prescription. Health and Safety Code section 11170 precludes a person from prescribing, administering, or furnishing a controlled substance to herself. Respondent furnished phentermine to herself without a valid prescription on numerous occasions. Therefore, cause exists to discipline her original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (j), as that statute relates to Business and Professions Code section 4059, subdivision (a), and Health and Safety Code section 11170.⁴

6. "Unprofessional conduct" also includes the violation or attempted violation of the Pharmacy Law or of the applicable federal and state laws and regulations governing pharmacy. (Bus. & Prof. Code, § 4301, subd. (o).) Each cause for discipline discussed in Legal Conclusions 2 through 5 constitutes separate cause to discipline respondent's original pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (o).

Conclusion

7. Cause exists to discipline respondent's original pharmacy technician registration for the reasons discussed in Legal Conclusions 2 through 6, individually and collectively. When all the evidence is considered, respondent did not introduce sufficient evidence to establish it would not be contrary to public health, safety, or welfare to allow her to continue performing her licensed duties, even on a probationary basis, for the reasons explained in Factual Findings 8 through 10. Therefore, her original pharmacy technician registration should be revoked.

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⁴ As the fifth cause for discipline, complainant alleged, "respondent is subject to discipline under Code section 4301, subdivision (j), in that Respondent violated statutes regulating controlled substances and dangerous drugs, including Code section 4059, as set forth above in paragraph 20, Code section 4060, as set forth in paragraph 18, and Health and Safety Code section 11350, as set forth above in paragraph 18, and Health and Safety Code section 11170, as set forth above in paragraphs 19 and 20. But cause for discipline based on those allegations was previously discussed in Legal Conclusions 3 through 5, and no separate legal basis for cause exists based on the same allegations.

Award of Costs

8. Business and Professions Code section 125.3, subdivision (a), states:

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

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

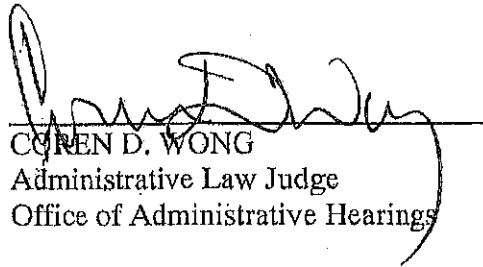
In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

9. After considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of \$2,500 are reasonable and are awarded as set forth in the Order below.

ORDER

Original Pharmacy Technician Registration Number TCH 60386 issued to respondent Jennifer Ann Bridges is REVOKED.

DATED: November 23, 2015


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5234

13 **JENNIFER ANN BRIDGES**
5909 Brittany Way
14 Citrus Heights, CA 95610

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **60386**

17 Respondent.

18
19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the Executive
22 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

23 2. On or about January 11, 2005, the Board issued Pharmacy Technician Registration
24 Number TCH 60386 to Jennifer Ann Bridges ("Respondent"). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on January 31, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Code section 4011 provides, in pertinent part, that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Code section 4300 states, in pertinent part, that every license issued may be suspended or revoked.

6. Code 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 PROVISIONS

Business and Professions Code

7. Code section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct. 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 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not."

...

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.”

3 ...

4 “(j) The violation of any of the statutes of this state, or any other state, or of the United
5 States regulating controlled substances and dangerous drugs.”

6 ...

7 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
8 violation of or conspiring to violate any provision or term of this chapter or of the applicable
9 federal and state laws and regulations governing pharmacy, including regulations established by the
10 board or by any other state or federal regulatory agency.”

11 ...

12 8. Code section 4021 of the Code states:

13 “‘Controlled Substance’ means any substance listed in Chapter 2 (commencing with section
14 11053) of Division 10 of the Health and Safety Code.”

15 9. Code section 4022 states, in pertinent part:

16 “‘Dangerous drug’ means any drug unsafe for self-use in humans or animals, and includes the
17 following:

18 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
19 a prescription,’ ‘Rx only.’ Or words of similar import.”

20 ...

21 “(c) Any drug that by federal or state law can be lawfully dispensed only on
22 prescription or furnished pursuant to section 4006.”

23 10. Code section 4059 provides, in pertinent part, that no person shall furnish any
24 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or
25 veterinarian.

26 11. Code section 4060 states, in pertinent part, that no person shall possess any controlled
27 substance, except that furnished upon a valid prescription/drug order.

28 ∴

1 **Health and Safety Code**

2 12. Health and Safety Code section 11170 states that "no person shall prescribe,
3 administer, or furnish a controlled substance for himself."

4 13. Health and Safety Code section 11173 provides, in pertinent part, that no person shall
5 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
6 administration of controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
7 (2) by the concealment of a material fact.

8 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
9 any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision
10 (b) or (c), or any controlled substance which is a narcotic drug in Schedules III-V, absent a valid
11 prescription.

12 **COST RECOVERY**

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

17 **DRUGS**

18 16. "Adipex," or "Phentermine" is a Schedule IV controlled substance pursuant to Health
19 and Safety Code section 11057, subdivision (f), and a dangerous drug pursuant to Business and
20 Professions Code section 4022. It is a stimulant and an appetite suppressant.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)**

23 17. Respondent is subject to discipline under Code section 4301, subdivision (f), for
24 unprofessional conduct, in that Respondent committed numerous acts involving moral turpitude,
25 dishonesty, fraud, deceit or corruption. The circumstances are as follows:

26 a. Between approximately April 2013 and October 2013, Respondent stole
27 approximately two bottles of phentermine tablets and one bottle of phentermine capsules schedule
28 IV controlled substances, from Walgreens Pharmacy in Citrus Heights, where Respondent was

1 employed a pharmacy technician. On or about October 3, 2013, Respondent admitted to stealing
2 phentermine. Respondent stole phentermine by removing a bottle from the medication shelf,
3 opening the bottle and taking tablets and/or capsules out, and placing them in her pocket. The
4 drugs she stole and illegally possessed were fraudulently and illegally used for self-medication,
5 without a prescription for those medications.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unlawful Possession of Controlled Substances)**

8 18. Respondent is subject to discipline under Code sections 4301, subdivision (j), section
9 4060, and Health and Safety Code section 11350, in that on multiple instances, Respondent
10 possessed controlled substances (phentermine) without a prescription, as more fully set forth
11 above in paragraph 17 and its subpart.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unlawful Self-Administration of Controlled Substances)**

14 19. Respondent is subject to discipline under Code section 4301, subdivision (h), and
15 Health and Safety Code section 11170, in that on multiple instances, Respondent administered to
16 herself controlled substances (phentermine) without a prescription, as more fully set forth above in
17 paragraph 17 and its subpart.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Furnishing of Dangerous Drugs)**

20 20. Respondent is subject to discipline under Code sections 4301, subdivision (j), section
21 4059, and Health and Safety Code section 11170, in that on multiple instances, Respondent
22 furnished to herself controlled substances and dangerous drugs (phentermine) without a valid
23 prescription, as more fully set forth above in paragraph 17 and its subpart.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Violation of Statutes Governing Controlled Substances)**

26 21. Respondent is subject to discipline under Code section 4301, subdivision (j), in that
27 Respondent violated statutes regulating controlled substances and dangerous drugs, including
28 Code section 4059, as set forth above in paragraph 20, Code section 4060, as set forth above in

1 paragraph 18, and Health and Safety Code section 11350, as set forth above in paragraph 18, and
2 Health and Safety Code section 11170, as set forth above in paragraphs 19 and 20.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Violation of Laws Governing Pharmacy)**

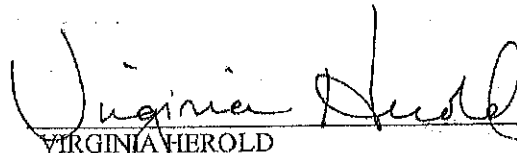
5 22. Respondent is subject to discipline under Code section 4301, subdivision (o), in that
6 Respondent violated the laws governing pharmacy, as more fully set forth above in paragraphs 17
7 through 21, and their subparts.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 60386,
12 issued to Jennifer Ann Bridges;
- 13 2. Ordering Jennifer Ann Bridges to pay the Board of Pharmacy the reasonable costs of
14 the investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.
- 17
18

19 DATED: 9/14/14



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

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