

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

In the Matter of the Accusation Against:

MECHELLE MARIE LAWRENCE-LONG,

Pharmacy Technician Registration
No. TCH 9254

Respondent.

Case No. 5356

OAH No. 2016030908

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 12, 2017.

It is so ORDERED on June 12, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 17-18, 2017, at Los Angeles, California.

Michael A. Cacciotti, Deputy Attorney General, appeared and represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

Daniel E. Curry, Attorney at Law, appeared and represented respondent Mechelle Marie Lawrence-Long who was present throughout the hearing.

The parties submitted the matter for decision at the conclusion of the hearing on April 18, 2017.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.
2. On August 27, 1993, the Board issued Original Pharmacy Technician Registration number TCH 9254 to respondent. Respondent's registration is valid and scheduled to expire on June 30, 2017.
3. Respondent was employed as a pharmacy technician at Super-Rite Drugs in Van Nuys California. She worked at the pharmacy for eight years at a final rate of \$19 per hour, plus an annual bonus. David Preller (Pharmacist), the owner and pharmacist-in-charge

of Super-Rite Drugs, was satisfied with respondent's job performance. No evidence was presented of any history of employment discipline by the Pharmacist against respondent, such as written warnings, corrective action notices, or reprimands. No evidence was presented of any complaint made by respondent to the Pharmacist during her employment of her working conditions or the pharmacy's business practices.

4. On April 9, 2011, while respondent was not on duty, two men armed with guns robbed the pharmacy. They handed one employee a written list of drugs and medication to gather and deliver, and demanded everyone else in the store to lie face down on the floor. The robbers fled the scene with the demanded drugs; OxyContin was not on the written list, and not included in the drugs and medication they stole.

5. The Pharmacist was running a personal errand at the time of the robbery. He was notified of the robbery by his stepson, who was working at the pharmacy as a clerk. By the time the Pharmacist arrived at the pharmacy, the police were on the scene and the pharmacy was closed to the public. The Pharmacist filed a police report, estimating the value of loss at \$300.

6. The next day, April 10, 2011, the Pharmacist began a narcotics inventory for the period beginning January 18, 2010, the date of the pharmacy's last inventory, and ending April 9, 2011, the day before the robbery (the Inventory Period). The Pharmacist spent five days to complete the inventory. Taking into account the list of drugs and medication reportedly stolen during the robbery, the Pharmacist determined that his entire stock was accounted for "within a few tablets," except OxyContin¹ which was "off by thousands." (Testimony, Pharmacist.)

7. The Pharmacist ran logs for all purchases of OxyContin from the wholesaler and every prescription filled for OxyContin during the Inventory Period. During the 15-month Inventory Period, the pharmacy ordered 94 bottles of OxyContin containing 100 tablets in each bottle, and yet only 41.29 bottles were used to fill prescriptions. (Ex. 7, p. 0034.) The pharmacy's custom and practice was to carry no more than three bottles of OxyContin at a time. Therefore, the Pharmacist concluded that approximately 49 bottles of OxyContin, or 4,734 tablets, were removed from the premises over the course of the Inventory Period. (Ex. 5 and 7.)

8. During the Inventory Period, a 100-count bottle of OxyContin cost the pharmacy approximately \$1,100, or less than \$12 per tablet. However, OxyContin has a street value of approximately \$100 per tablet. Accordingly, although the pharmacy's actual loss was approximately \$5,700, the street value of the stolen OxyContin was almost \$500,000

9. The Pharmacist suspected that an employee was stealing OxyContin. The pharmacy did not store controlled substances in a locked cabinet because it was not required

¹ OxyContin tablets are manufactured in various doses. Unless otherwise specified, all references herein to OxyContin shall refer only to a dosage of 80 mg per tablet.

by law and the Pharmacists had no prior incidents of drug diversion by employees. Accordingly, all employees had access to the shelving areas where controlled substances were stocked. Usually, two pharmacy technicians and a pharmacist were responsible to close the store, but the pharmacy did not have any established policy, custom, or practice to check bags or screen staff as they left the premises at the close of business.

10. At the time of the robbery, the Pharmacist employed approximately 13 individuals, including registered pharmacy technicians and unlicensed clerks. He inquired with his attorney about the legality of asking the staff to submit to a lie detector test. He was advised that the request would be proper if the test was voluntary and limited to a single question. The attorney referred the Pharmacist to a former agent with the Federal Bureau of Investigations who offered the service for a fee. The Pharmacist retained the agent's service and scheduled testing on Monday April 18, 2011, to take place within blocks of the pharmacy. The Pharmacist notified his entire staff, including respondent, of the time and place for volunteers to undergo the test, one by one, and answer the single question, "Did you steal OxyContin?"

11. Notwithstanding respondent's evidence to the contrary, the following findings are made, taking into account Factual Findings 16-27. On Sunday April 17, 2011, the night before before the scheduled lie detector test, respondent called the Pharmacist and admitted to stealing the OxyContin. Immediately thereafter, respondent called Kelly Ascencio, her friend and the pharmacy's head pharmacy technician who essentially managed the store. Respondent admitted to Kelly Ascencio that she had been stealing the OxyContin.

12. The next day, on Monday April 18, 2011, the lie detector test was cancelled, and no employee, including, respondent took a lie detector test. That same day, April 18, 2011, respondent tendered her written resignation in lieu of being discharged, writing: "I, Mechelle Lawrence-Long, confirm that I am voluntarily terminating my employment at Super-Rite Drugs." (Ex. 8, p. 0062.) At the time, she did not have another offer of employment. Respondent filed a claim for unemployment compensation benefits with the Employment Development Department (EDD), and the Pharmacist filed a timely employer protest. EDD determined that respondent was disqualified for unemployment compensation benefits.² She next worked at CVS pharmacy, starting in June 2012, as a pharmacy technician.

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² An individual is disqualified for unemployment compensation benefits "if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work." (Unemp. Ins. Code, § 1256.)

13. The Pharmacist reported the theft and loss of controlled substances to the United States Drug Enforcement Administration and to the Board. The Pharmacist knew and understood that the theft or loss of controlled substances was a violation of the law and regulations,³ and that he could be disciplined as a result of the reported loss. On May 18, 2011, an enforcement analyst with the Board acknowledged the Pharmacist's incident report, and asked for a detailed explanation and supporting documents. On May 22, 2011, the Pharmacist responded with a handwritten statement in which he wrote, "[respondent] called me at home and confessed to stealing and selling them." (Ex. 7, p. 0033.) The Pharmacist also furnished printouts in relation to his narcotics inventory, plus a copy of the police report.

14. The Board assigned Karla Retherford-Parreira to investigate the incident. The investigator went to the site and reviewed the pharmacy's records of acquisition and disposition of OxyContin. She examined all order forms completed and signed for the acquisition of OxyContin and found no indicia of forgery. She interviewed the Pharmacist and Kelly Ascencio, who both reported the admission made by respondent in telephone calls on the eve of the scheduled lie detector test. The investigator reviewed respondent's resignation, but did not interview respondent despite efforts to locate her.⁴ The investigator obtained records directly from the wholesaler and spoke with three pharmacists who worked on the site during periods when the Pharmacist was on medical leave. The investigator verified the inventory results performed by the Pharmacist and concluded that respondent was responsible for diverting the OxyContin. The investigator determined that the pharmacy failed to have policies and procedures in place for taking action when a licensed individual is impaired or known to have diverted drugs.

15. On March 17, 2014, the Board issued Citation CI 201360416 and Citation and Fine CI 2010 48263, based on the Pharmacist's breach of his duty to control against theft or diversion of dangerous drugs and devices, his failure to accommodate the safe practice of pharmacy, and his failure to have powers of attorney on file for substitute pharmacists who ordered controlled substances on his behalf. The Board assessed fines in the amount of \$2,500, and the Pharmacist timely paid the assessment.

Credibility Analysis

16. Respondent testified that she called the Pharmacist and Kelly Ascencio on the Sunday night before the scheduled lie detector test, but only to report that she was quitting. Respondent denied that she admitted to either that she stole the missing OxyContin. In her written declaration to the Board, dated September 25, 2014, respondent wrote "No, I did not

³ Pharmacy Law, Business and Professions Code sections 4000 et seq.; Uniformed Control Substances Act, Health and Safety Code sections 11000 et seq.; California Code of Regulations, title 16, division 17.

⁴ Respondent acknowledged in her testimony that she had moved without filing a notice of change of address with the Board.

admit to David Preller about OxyContin," stating further "I [quit] because I was being threaten [*sic*] regarding 3rd party fraud that he was doing." (Ex. 28, p. 0026.)

17. Specifically, respondent testified that the pharmacy was subject to regular audits, which made her "feel that something was going wrong," and that she observed Kelly Ascencio "forging prescriptions" to complete the audits and reconcile audit results. She observed the Pharmacist dispense a year's worth of prescriptions to a couple from India, and "pocket" the cash. Respondent otherwise testified that she was instructed to pull prescriptions off the shelf that were never reversed on insurance claims, and that she observed Kelly Ascencio "stuffing receipts in a drawer," purportedly to conceal unreversed insurance claims. Respondent testified that these purported actions constituted fraud and exposed her to liability, and that the Pharmacist threatened to discharge her if she refused to follow his instructions.

18. Respondent's evidence was supported by the testimony of two character witnesses who were both aware of the general nature of the allegations against respondent; however, neither witness knew details of the allegations, including the size of the alleged theft and the request to take a lie detector. Jill Kolin, respondent's friend and former supervisor at CVS, testified that respondent was one her better employees, that no drugs were ever diverted during her working relationship with respondent, and that she considered respondent to be trustworthy, faithful, and honest. Yvette Ann Polite testified that she has known respondent for 25 years, and that they are good friends. She further testified that, during her social interactions with respondent, respondent complained of work-related stress during her employment at Super-Rite Drugs, mentioned that she was "asked to do things that made her uncomfortable" without providing details of the offensive instructions, and spoke about quitting.

19. The Pharmacist credibly testified that his pharmacy was prone to audits because of the volume of prescriptions it bills through Medi-Cal, that the pharmacy is regularly audited six times per year by insurance companies, and that same-day forgeries are unnecessary to cure discrepancies because insurance companies routinely give 30 days to provide verification documents, which are routinely ordered from physicians or wholesalers to cure audit deficiencies.

20. The Pharmacist further testified that he did not engage in insurance fraud, and that he never threatened respondent to comply with instructions to engage in fraud. His testimony was supported by the testimony of the Board investigator who explained that insurance claim reversals are systematized and automated, and that computer data entry requirements make it "difficult not to have a pathway that reveals fraud." A second Board investigator, Sajal Desai, testified that she interviewed respondent during a follow up investigation, that respondent reported to her that she quit due to perceived insurance fraud, and that she examined and found no evidence of fraud. The Pharmacist acknowledged selling prescription medication to the couple from India for \$400 in cash, and testified that the transaction was lawful and proper, that he "rang it up," and that he reported the payment on the appropriate income tax returns.

21. Kelly Ascencio credibly testified that she and respondent developed a friendship during their employment at Super Rite Drugs, that they regularly socialized, that she paid social visits to respondent in her home, and that they spoke on the phone or sent text messages to each other on a regular basis. This testimony was corroborated by respondent. Ascencio further testified that, during their regular social interactions, respondent never stated any concern about her working conditions or perceptions of fraudulent activities, and never mentioned that she was contemplating quitting or looking for other work.

22. In determining the credibility of each witness, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the witness's testimony at the hearing. (Evid. Code, § 780.) The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of "one credible witness may constitute substantial evidence." (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.) The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact. (Evid. Code, § 411.)

23. The Pharmacist's testimony was corroborated by his written statement to the Board one month after the purported admission, his verbal statements to the Board investigator during the investigation, and the consistent testimony of Kelly Ascencio. His testimony was sincere and logical, and his demeanor was clear and unequivocal.

24. Respondent's testimony is contradicted by inherent improbabilities as to its accuracy. (*Snell v. Telehala* (1969) 274 Cal.App.2d 61.) She resigned at a time when there was no pending discipline against her, and she had no offer of other employment. The timing of her resignation, the same date as a scheduled lie detector test concerning the theft of OxyContin, tends to establish a nexus between the resignation and the misconduct, and disprove the logic and truthfulness of respondent's explanation. Respondent's written explanation to the Board of the reasons she left work was made more than three years after her resignation and does not comport with her conduct. Specifically, if respondent was truly concerned about her working conditions, she would reasonably be expected to confide in a friend who shared the same working conditions, to wit Kelly Ascencio. And yet, in regular text messages, telephone calls, and social visits, there is no evidence that respondent raised these concerns with her friend and coworker. Also, respondent made no complaint to the Pharmacist about her working conditions, which a concerned employee would reasonably be expected to make in lieu of abandoning a reliable job that paid \$19 per hour to enter an undefined and uncertain period of unemployment, which in respondent's case, lasted 15 months. Respondent's character witnesses both testified that respondent was honest, a trait consistent with admitting wrongdoing.

25. Under the circumstances and evidence, respondent's credibility was lacking, and her testimony is given little weight. To the extent her testimony is an effort to recant the admission she made to the Pharmacist and Kelly Ascencio, courts look upon recantation with suspicion. (*Johnson v. United States* (1961) 291 F.2d 150, 154.)

26. Unrefuted evidence was presented to show that that the Pharmacist had chronic back pain. Respondent argued that the Pharmacist's condition gave rise to an inference that the Pharmacist was motivated to abuse OxyContin. The Pharmacist testified that he first underwent back surgery in 1991, correcting his condition for approximately 12 years. However, he suffered a relapse and underwent "one surgery after another" beginning in 2003. His most recent surgery was approximately 14 months before the hearing. The Pharmacist credibly testified that he took OxyContin as prescribed by his primary physician, occasionally taking doses of 10 mg per tablet, that he had no motivation to steal from himself, and that he knew that reporting the loss would invite the Board to investigate and the known violation would likely result in discipline or penalties. The Board investigator testified that she considered whether the Pharmacist was responsible for the diversion of OxyContin, but determined it was inherently improbable that he would expose himself to discipline by reporting the loss when he could attribute the loss to the robbery, if ever investigated in the future.

27. The facts and circumstances do not support a finding of diversion by the Pharmacist for his personal use. The weight of all evidence establishes that respondent diverted the missing OxyContin from Super-Rite Drugs during the Inventory Period.

28. Respondent was not arrested or convicted in connection with the diverted OxyContin. No evidence was presented to show that respondent has any criminal record.

Costs

29. Complainant incurred prosecution costs in the amount of \$12,020 and investigation costs in the amount of \$6,108. These costs totaling \$18,128 were supported by declarations and are reasonable considering the complexity of the case.

LEGAL CONCLUSIONS

1. The standard of proof in these proceedings is a preponderance of the evidence, because pharmacy technicians hold an occupational license. (See Evid. Code, § 115.) Pursuant to the Board's "Disciplinary Guidelines" (Rev. 10/2007), "Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist." (Cal. Code Regs., tit. 16, § 1760) To obtain a license, an applicant must complete 240 hours of instruction covering, among other things, "the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and

ethics, laws and regulations governing the practice of pharmacy.” (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.)

2. Moreover, the law makes plain that a pharmacy technician performs nondiscretionary tasks that do not require the type of professional judgment exercised by a pharmacist. “A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician’s nondiscretionary tasks may include “(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging.” (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized “to perform any act requiring the exercise of professional judgment by a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, § 1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient’s medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

3. The Board shall take disciplinary action against the holder of a pharmacy technician registration guilty of unprofessional conduct. (Bus. & Prof. Code, § 4301.)

4. Unprofessional conduct includes the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, § 4301, subd. (f).)

5. Unprofessional conduct includes the violation of any law regulating controlled substances and dangerous drugs, including the possession of a controlled substance without a prescription. (Bus. & Prof. Code, §§ 4060 and 4301, subd. (j).)

6. Unprofessional conduct includes violating any law governing pharmacy. (Bus. & Prof. Code, § 4301, subd. (o).) The possession of a controlled substance without a prescription violates the laws regulating controlled substances and dangerous drugs. (Bus. & Prof. Code, §4060.)

7. In this case, respondent diverted thousands of tablets of OxyContin, a controlled substance, without a prescription and without paying consideration. Misappropriation of an employer’s stock and trade is inherently dishonest, fraudulent, and deceitful. Her misconduct violated Health and Safety Code section 11350 and Business and Professions Code section 4060. By violating laws governing pharmacy and regulating controlled substances, respondent engaged in unprofessional conduct.

8. Cause exists to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivisions (f), (j) and (o), because she engaged in unprofessional conduct. (Factual Findings 11 and 27.)

9. When considering the revocation or suspension of a pharmacy technician registration, the Board must consider evidence of mitigation and rehabilitation. (Cal. Code Regs., tit. 16, § 1769). To evaluate respondent's rehabilitation, the Board must consider the following criteria:

- (A) The nature and severity of the act.
- (B) The total criminal record.
- (C) The time that has elapsed since commission of the act.
- (D) Whether respondent has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (E) Whether respondent has complied with any terms of parole, probation, restitution, or other sanctions lawfully imposed against respondent.
- (F) Evidence, if any, of rehabilitation submitted by respondent.

10. In this case, respondent has no known criminal record and has impressed upon her friends that she is trustworthy and honest. Although she was not arrested or convicted of a crime, the nature of the act involved the unlawful possession of a controlled substance, conduct that specifically conflicts with the duties and responsibilities of a pharmacy technician. Respondent's offense violated the very pharmacy laws the Board licensed her to enforce and uphold for the public's protection. Accordingly, a direct nexus exists between the misconduct and the licensed activity, and her unlawful possession of controlled substances is consequently more egregious.

11. By denying blame and attempting to recant her admission, respondent fails to acknowledge the wrongfulness of her own conduct. Rehabilitative efforts presuppose an admission of the problem, and respondent's failure to recognize the problem, its effect on her private life, and its potential effect on her professional practice, heighten the need for discipline. (*In re Kelley* (1990) 52 Cal.3d 487.)

12. Imposing discipline on respondent's registration furthers a particular social purpose: the protection of the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.) The weight of the evidence establishes that revoking respondent's registration will best serve and protect the public.

13. The Board is entitled to recover all reasonable costs incurred to investigate and prosecute this matter. (Bus. & Prof. Code, § 125.3.)

14. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. An agency must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay.

15. Complainant incurred reasonable prosecution costs in the amount of \$18,128. (Factual Finding 29.) However, respondent used the hearing process to raise a colorable challenge to the discipline, and revoking her license will adversely affect her ability to pay. Under these facts and circumstances, ordering respondent to immediately pay costs will be unduly punitive. Accordingly, complainant's costs are allowed in the amount of \$18,128, but payment is deferred until such time as respondent successfully petitions the Board for reinstatement of her registration.

ORDER

Pharmacy technician registration number TCH 9254, issued to respondent Mechelle Marie Lawrence-Long, is revoked. Respondent shall relinquish her technician registration to the Board within 10 days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of her revoked technician registration for three years from the effective date of this decision.

As a condition precedent to reinstatement of her revoked technician registration, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$18,128, to be paid in full prior to the reapplication or reinstatement of her revoked technician registration, unless otherwise ordered by the Board.

DATED: May 17, 2017

DocuSigned by:
Matthew Goldsby
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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 THOMAS L. RINALDI
Supervising Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:
12 **MECHELLE MARIE LAWRENCE-LONG**
2851 W. Ave L PMB #118
13 Lancaster, CA 93536
14 Pharmacy Technician Registration No. TCH 9254
15 Respondent.

Case No. 5356
ACCUSATION

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
21 2. On or about August 27, 1993, the Board issued Pharmacy Technician Registration
22 No. TCH 9254 to Mechelle Marie Lawrence-Long (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on June 30, 2015, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
2 chapter [Pharmacy Law, (Business and Profession Code, Sec 4000 et seq.)] and the Uniform
3 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
4 Safety Code)."

5 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
6 license issued may be suspended or revoked."

7 6. Section 4300.1 of the Code states, in pertinent part:

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

13 **STATUTORY PROVISIONS**

14 7. Section 4059 of the Code states, in pertinent part:

15 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
16 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
17 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
18 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
19 3640.7. . . ."

20 8. Section 4060 of the Code states, in pertinent part:

21 "No person shall possess any controlled substance, except that furnished to a person upon
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
23 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
24 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
25 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
26 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
28 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
3 labeled with the name and address of the supplier or producer.

4 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
5 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
6 and devices."

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

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

11

12 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
13 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
14 whether the act is a felony or misdemeanor or not.

15

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

21 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away,
22 or administering or offering to sell, furnish, give away, or administer any controlled substance to
23 an addict.

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

26

27 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
28 violation of or conspiring to violate any provision or term of this chapter or of the applicable

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency.

3 "(p) Actions or conduct that would have warranted denial of a license.

4 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
5 board.

6 10. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:

7 "Except as otherwise provided in this division, every person who possesses (1) any
8 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
9 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
10 specified in subdivision (b) or (e) of Section 11055, or specified in subdivision (h) of Section
11 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
12 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
13 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
14 than one year, except that such person shall instead be punished pursuant to subdivision (h) of
15 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
16 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
17 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
18 of the Penal Code.

19 **REGULATORY PROVISION**

20 11. California Code of Regulations, title 16, section 1770, states:

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

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COST RECOVERY

12. Section 125.3 of the Code provides that the Board may request the administrative law judge to 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

13. OxyContin, a brand name formation of oxycodone hydrochloride, is an opioid agonist, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to section 4022 of the Code.

FACTUAL BACKGROUND

14. Respondent was employed as a pharmacy technician by Super-Rite Drugs (Pharmacy), located at 14425 Burbank Blvd., Van Nuys, CA 91401.

15. On or about April 9, 2011, the Pharmacy was robbed at gun point and one of the employees was given a "shopping list" by the robbers. OxyContin was not on the list.

16. On or about April 10, 2011, the Pharmacy performed a narcotic inventory and all medications were accounted for except OxyContin 80 mg. Furthermore, the pharmacist-in-charge asked his staff members if they would be willing to take a polygraph examination regarding losses of OxyContin 80 mg.

17. On or about April 18, 2011, Respondent voluntarily terminated her employment with the Pharmacy after admitting to the pharmacist-in-charge and other technicians that she stole OxyContin 80 mg from the Pharmacy.

18. On or about December 18, 2013, the Board received a copy of an audit for the Pharmacy from January 18, 2010 to April 8, 2011, which revealed that the Pharmacy was missing 5,098 tablets of OxyContin 80 mg.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unlawful Furnishing of Dangerous Drugs)**

3 19. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
4 (o), and 4059, subdivision (a), on the grounds of unprofessional conduct, in that on or between
5 January 18, 2010 to April 8, 2011, Respondent furnished to herself or another OxyContin, a
6 controlled substance and a dangerous drug, without a valid prescription. Complainant refers to
7 and by this reference incorporates the allegations set for above paragraphs 14 through 18,
8 inclusive, as though set forth fully.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unlawful Possession of a Controlled Substance)**

11 20. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
12 the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
13 Code section 11350, subdivision (a), in that on or between January 18, 2010 to April 8, 2011,
14 Respondent possessed and removed from the Pharmacy OxyContin, without a valid prescription.
15 Complainant refers to and by this reference incorporates the allegations set for above paragraphs
16 14 through 18, inclusive, as though set forth fully.

17 **THIRD CAUSE FOR DISCIPLINE**

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

19 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
20 on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
21 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
22 incorporates the allegations set for above in paragraphs 14 through 18, inclusive, as though set
23 forth fully.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct / Violating Pharmacy Law)**

26 22. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
27 (o) and (p), and 4060, in that Respondent committed acts of unprofessional conduct that would
28 have warranted a denial of a license. Complainant refers to and by this reference incorporates the

1 allegations set for above in paragraphs 14 through 21, inclusive, as though set forth fully.

2 PRAYER

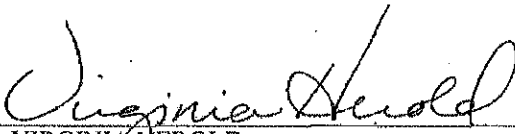
3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Board issue a decision:

5 1. Revoking or suspending Pharmacy Technician Registration No. TCH 9254, issued to
6 Mechelle Marie Lawrence-Long;

7 2. Ordering Mechelle Marie Lawrence-Long to pay the Board the reasonable costs of
8 the investigation and enforcement of this case, pursuant to section 125.3 of the Code;

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

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12 DATED: 5/28/15



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

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