

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

In the Matter of the Accusation Against:

STACI ROSENKRANZ,

Pharmacy Technician Registration Number
TCH 98971

Respondent.

Case No. 5690

OAH No. 2016031268

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 November 30, 2016.

It is so ORDERED on October 31, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on September 8, 2016, at Los Angeles, California.

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

Respondent Staci Rosenkranz did not appear after being served with notice of hearing as required by law.¹

Complainant presented evidence and submitted the matter for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On August 4, 2015, acting in her official capacity, complainant brought the accusation against respondent. Respondent timely submitted a Notice of Defense.

¹ Approximately one hour before the hearing, respondent electronically filed a written request to continue the hearing on the grounds that she was displaced the night before and compelled to vacate her home out of fear for her safety, and in response to unspecified threats from her estranged husband. A previously scheduled hearing was continued when respondent failed to appear; respondent's telephonic request to continue the August 1, 2016 hearing was granted because the tires to her automobile had been slashed, impeding her ability to travel to the hearing location. The motion to continue the September 8, 2016 hearing was denied as untimely and for lack of good cause.

2. On June 10, 2010, the Bureau issued Pharmacy Technician Registration number TCH 98971 to respondent. Respondent's license is valid and is scheduled to expire on January 31, 2018.

3. On July 19, 2012, respondent entered a plea of guilty and was convicted of public intoxication in violation of Penal Code section 647, subdivision (f), a misdemeanor. (*People v. Rosenkranz* (Super. Ct. San Bernardino County, 2012, No. MVA1200691).) The court withheld pronouncing judgment and granted a conditional and revocable release for a period of 36 months on terms and conditions, including: completion of 100 hours of community service, full compliance with the law, possession of no alcohol or controlled substance without a prescription, and payment of fines totaling the sum of \$202.

4. The facts and circumstances of the crime are reflected in a certified copy of an incident report filed by Officer Michael Freeman of the Fontana Police Department. Officer Freeman made the following observations:

I arrived and made contact with [respondent]. While speaking to [respondent], I could smell a strong odor of alcohol coming from her person. [Respondent] had red-bloodshot, watery eyes and was slurring her speech badly. [Respondent] was having trouble standing and had to lean on a parked car. . . . Upon speaking to [respondent], she said she left her purse on the grass in front of the liquor store. I retrieved the purse and observed multiple empty Budweiser bottles next to it. A search of the purse incident to arrest revealed a pill bottle containing (58) Alprazolam² pills (.25 mg). This pill is also known as Xanax. The prescription bottle had a name of Heather Sharp on it. . . . and should have contained 90 pills.

5. On August 15, 2014, the court revoked probation based on respondent's failure to file proof of completing community service. Respondent did not appear at the hearing on the revocation of her probation and her custody status was entered in the minute order as "fugitive." (Ex. 4.) On September 9, 2015, the court terminated respondent's probation and changed respondent's custody status to "released."

6. In aggravation, respondent has the following two prior convictions relating to alcohol abuse.

(A) On May 11, 2010, respondent entered a plea of nolo contendere and was convicted of driving while having 0.08 percent or more by weight of alcohol in her blood in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. (*People v. Rosenkranz* (Super. Ct. Los Angeles County, 2010, No. 0JB03546).) Imposition of

² Alprazolam is a prescription drug, listed on Schedule IV of the Controlled Substances Act. (21 U.S.C. §801 et seq. and California Health & Saf. Code, § 11507, subd. (d)(1).)

sentence was suspended and the court placed respondent on summary probation for a period of three years on terms and conditions, including: serving four days in jail; paying fines and restitution in the total sum of \$1,851; not driving a motor vehicle with any measurable amount of alcohol in her blood system; and obeying all laws and orders of the court. The conviction was based on an incident on March 1, 2010, when a Glendora Police officer observed respondent exhibiting symptoms of intoxication during a traffic stop. Respondent provided breath samples for testing, which produced results of a blood alcohol content level of 0.17 percent.

(B) On August 14, 2007, respondent entered a plea of guilty and was convicted of driving while having 0.08 percent or more by weight of alcohol in her blood in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. (*People v. Rosenkranz* (Super. Ct. Orange County, 2010, No. 07HF0251).) Imposition of sentence was suspended and the court placed respondent on informal probation for a period of three years on terms and conditions, including: completion of a six-month level two first offender alcohol program and a Mothers Against Drunk Driving Victim's Impact panel. The conviction was based on an incident on January 10, 2007. Respondent drove while she had a blood alcohol content of 0.18 percent and possessed a bottle of pills, including Xanax and Zoloft.

7. On January 31, 2014, respondent's registration was scheduled to expire. Before it expired, respondent filed a Renewal Application. On the application, respondent was asked, "Since you last renewed your license . . . have you been convicted of any crime in any state, the U.S.A. and its territories, military court or a foreign country?" (Ex. 12.) Respondent checked the box "no" in response to the question. Complainant did not present clear and convincing evidence to establish when respondent last renewed her registration.

8. Complainant incurred reasonable costs in the amount of \$4,457.50 in its investigation and enforcement of the Accusation against respondent.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. The Board may suspend or revoke the license of any licensee who is guilty of unprofessional conduct. (Bus. & Prof. Code, §4301.) Unprofessional conduct includes:

(A) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee. (Bus. & Prof. Code, §4301, subd. (I); see Legal Conclusion 3.)

(B) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances. (Bus. & Prof. Code, §4301, subd. (k).)

(C) The violation of any state or federal statute regulating controlled substances and dangerous drugs. (Bus. & Prof. Code, §4301, subd. (j).)

(D) The self-administration of any controlled substance, or the use of alcoholic beverages to an extent or in a manner as to be dangerous or injurious to oneself or to any other person or to the public. (Bus. & Prof. Code, §4301, subd. (h).)

(E) Knowingly making a false statement of the existence or nonexistence of a fact on any certificate or other document. (Bus. & Prof. Code, §4301, subd. (g).)

3. A crime is substantially related to the qualifications, functions or duties of a licensee if, to a substantial degree, the crime evidences a present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public's health, safety, or welfare. (Cal. Code Regs. tit. 16, § 1770.)

4. The duties of a pharmacy technician include removing drugs from stock, and counting, pouring, or mixing pharmaceuticals. (Cal. Code Regs., tit. 16, § 1793.2.)

5. In this case, respondent was convicted of public intoxication, a crime substantially related to respondent's registration because it evidences a present or potential unfitness to properly handle drugs and pharmaceuticals, as required of a pharmacy technician. Respondent has been convicted of more than one misdemeanor involving the abuse of alcohol, including two prior convictions for driving while having a blood alcohol content exceeding 0.08 percent. The evidence exhibits a pattern of substance abuse to an extent or in a manner so as to be dangerous to respondent and the public.

6. Cause exists to revoke respondent's registration under Business and Professions Code section 4301, subdivisions (h), (j), (k), and (l), because respondent has engaged in unprofessional conduct.

7. Cause does not exist to revoke respondent's registration under Business and Professions Code section 4301, subdivision (g). Because complainant did not establish when respondent last renewed her registration, the evidence fails to establish that respondent knowingly made a false statement on her Renewal Application with the Board. If she last renewed her registration after July 19, 2012, the statement on her Renewal Application would be true, not false. Nonetheless, respondent's registration is subject to discipline based on Legal Conclusion 6.

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8. When considering the suspension or revocation of a license, the Board is required to evaluate a licensee's rehabilitation. (Cal. Code Regs., tit. 16, § 1769, subd. (c).) Complainant presented evidence to show that, in spite of two prior convictions, respondent has continued to unlawfully engage in substance abuse. Her criminal record includes three alcohol-related convictions, and she has been observed in possession of controlled substances that were not prescribed for her. The nature and severity of the repeated acts does not indicate rehabilitation. Respondent has failed to present evidence of other activities or actions she may have undertaken to prevent a recurrence of any of the crimes for which she was convicted.

9. A licensee's violation of the Pharmacy Act entitles the Board, if it prevails in a disciplinary proceeding, to recover all reasonable costs incurred to investigate and prosecute the violation. (Bus. & Prof. Code, § 125.3.)

10. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. It 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.

11. Respondent failed to appear and use the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. Moreover, she failed to present evidence of her subjective good faith belief in the merits of her position, and whether she raised a colorable challenge to the discipline, or is unable to pay.

12. Complainant has established by clear and convincing evidence that respondent violated Business and Professions Code section 4301, a provision of the Pharmacy Act. (Legal Conclusion 6.) Complainant presented satisfactory proof to show that the Board incurred reasonable costs in the amount of \$4,457.50 to investigate and prosecute this matter. (Factual Finding 8.) Accordingly, the Board is entitled to recover from respondent the sum of \$4,457.50.

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ORDER

1. Pharmacy Technician Registration No. TCH 98971, issued to respondent Staci Rosenkranz, is revoked.

2. Respondent shall pay the amount of \$4,457.50 at such time and in such manner as the Board, in its discretion, may direct.

DATED: September 15, 2016

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

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5690

12 **STACI ROSENKRANZ**
6475 Sard Street
13 Alta Loma, CA 91701

ACCUSATION

14 Pharmacy Technician Registration
15 No. TCH 98971

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about June 10, 2010, the Board issued Pharmacy Technician Registration No.
23 TCH 98971 to Staci Rosenkranz (Respondent). The Pharmacy Technician Registration was in
24 full force and effect at all times relevant to the charges brought herein and will expire on January
25 31, 2016, unless renewed.

26 **JURISDICTION**

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

1 "(k) The conviction of more than one misdemeanor or any felony involving the use,
2 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
3 combination of those substances.

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

21 8. Section 4060 states:

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

1 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
2 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
3 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
4 ~~labeled with the name and address of the supplier or producer.~~

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

8 REGULATORY PROVISIONS

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

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

16 COST RECOVERY

17 10. Section 125.3 provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 11. CONTROLLED SUBSTANCE/DANGEROUS DRUG

24 "Alprazolam," is a Schedule IV controlled substance pursuant to Health and Safety Code
25 section 11057, subdivision (d) and is a dangerous drug pursuant to section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 12. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
4 conjunction with, California Code of Regulations, title 16, section 1770, on the grounds of
5 unprofessional conduct, in that the Respondent was convicted of a crime substantially related to
6 the qualifications, functions, and duties of a pharmacy technician, as follows:

7 a. On or about July 19, 2012, after pleading guilty, Respondent was convicted of one
8 misdemeanor count of violating Penal Code section 647, subdivision (f) [public intoxication] in
9 the criminal proceeding entitled *The People of the State of California v. Staci Rosenkranz* (Super.
10 Ct. San Bernardino County, 2012, No. MVA1200691). The Court placed Respondent on 36
11 months probation, with terms and conditions.

12 b. The circumstances surrounding the conviction are that on or about February 3, 2012,
13 Fontana Police officers were dispatched to a commercial business regarding a possible domestic
14 incident. On arrival, officers observed Respondent to have a strong odor of alcohol coming from
15 her breath. Her eyes were bloodshot, watery and she was slurring her speech. A records check
16 revealed an outstanding warrant and Respondent was placed under arrest. During a search of
17 Respondent's purse, the officers found a pill bottle containing Alprazolam pills, that were not
18 prescribed to her.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Alcohol Related Convictions)**

21 13. Respondent is subject to disciplinary action under section 4301, subdivision (k), on
22 the grounds of unprofessional conduct, in that, on or about July 19, 2012, Respondent sustained a
23 second criminal conviction involving the consumption of alcoholic beverages. Complainant
24 refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, as
25 though fully set forth herein.

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1 County, 2010, No. 0JB03546). The Court sentenced Respondent to serve four days in jail and
2 placed her on 3 years probation, with terms and conditions. The circumstances surrounding the
3 conviction are that on or about March 1, 2010, Glendora Police officers contacted Respondent
4 during a traffic enforcement stop where she displayed symptoms of intoxication. While at the
5 scene, Respondent submitted to a Preliminary Alcohol Screening test that resulted in a blood
6 alcohol content level of 0.17% on the first and second readings.

7 b. On or about August 14, 2007, after pleading guilty, Respondent was convicted of one
8 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
9 having 0.08% or more, by weight, of alcohol in her blood] in the criminal proceeding entitled *The*
10 *People of the State of California v. Staci Borson Rosenkranz* (Super. Ct. Orange County, 2007,
11 No. 07HF0251). The Court ordered Respondent to attend and complete a six month level two
12 first offender alcohol program and a Mother's Against Drunk Driving Victim's Impact Panel and
13 placed her on 3 years probation with terms and conditions. The circumstances surrounding the
14 conviction are that on or about January 10, 2007, Respondent drove a vehicle while having a
15 blood alcohol content level of 0.18%. During a search of Respondent's vehicle, officer found a
16 bottle with a variety of blue and tan pills. The 9 ½ blue pills with the marking GG258 were
17 confirmed as Xanax and 21 tan oblong pills with Zoflot stamps were confirmed to be Zoloft. The
18 other 8 light blue tablets were tested and received a positive result for methamphetamine/MDMA
19 and phentermine.

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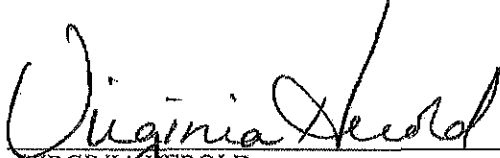
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PRAYER

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

1. ~~Revoking or suspending Pharmacy Technician Registration No. TCH-98971, issued to Staci Rosenkranz;~~
2. Ordering Staci Rosenkranz to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/22/16 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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