

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9429
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Statement of Issues
Against:

Case No. 6879

14 **EVELYN ANGELICA RUBALCAVA**
15 **AKA EVELYN ANGELICA RUBALCAVA**
16 **GOMEZ**

STATEMENT OF ISSUES

17 **Pharmacy Technician Registration**
18 **Applicant**

Respondent.

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20 **PARTIES**

21 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of
23 Consumer Affairs.

24 2. On or about May 21, 2018, the Board received an application for a Pharmacy
25 Technician Registration from Evelyn Angelica Rubalcava, also known as Evelyn Angelica
26 Rubalcava Gomez (Respondent). On or about May 15, 2018, Evelyn Angelica Rubalcava
27 certified under penalty of perjury to the truthfulness of all statements, answers, and
28 representations in the application. The Board denied the application on October 9, 2019.

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c) of the Code states, in pertinent part, that “The board
6 may refuse a license to any applicant guilty of unprofessional conduct.”

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

9 (a) Notwithstanding any other provisions of this code, the provisions of this
10 division shall govern the denial of licenses on the grounds of:

11 (1) Knowingly making a false statement of material fact, or knowingly omitting
12 to state a material fact, in an application for a license.

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit with the intent
15 to substantially benefit himself or another, or substantially injure another.

16 (4) Commission of any act which, if done by a licentiate of the business or
17 profession in question, would be grounds for suspension or revocation of license.

18 (b) Notwithstanding any other provisions of this code, the provisions of this
19 division shall govern the suspension and revocation of licenses on grounds specified in
20 paragraphs (1) and (2) of subdivision (a).

21 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack
22 of good moral character or any similar ground relating to an applicant’s character,
23 reputation, personality, or habits.

24 6. Section 480 of the Code states:

25 (a) A board may deny a license regulated by this code on the grounds that the
26 applicant has one of the following:

27 (1) Been convicted of a crime. A conviction within the meaning of this section
28 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
Any action that a board is permitted to take following the establishment of a conviction
may be taken when the time for appeal has elapsed, or the judgment of conviction has
been affirmed on appeal, or when an order granting probation is made suspending the
imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

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1 (3) (A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, a person shall not be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section
9 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of
10 a misdemeanor if he or she has met all applicable requirements of the criteria of
11 rehabilitation developed by the board to evaluate the rehabilitation of a person when
12 considering the denial of a license under subdivision (a) of Section 482.

13 (c) Notwithstanding any other provisions of this code, a person shall not be
14 denied a license solely on the basis of a conviction that has been dismissed pursuant to
15 Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
16 conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of
17 the Penal Code shall provide proof of the dismissal.

18 (d) A board may deny a license regulated by this code on the ground that the
19 applicant knowingly made a false statement of fact that is required to be revealed in the
20 application for the license.

21 (e) This section shall become inoperative on July 1, 2020, and, as of January 1,
22 2021, is repealed.

23 7. Section 481 of the Code states:

24 Each board under the provisions of this code shall develop criteria to aid it, when
25 considering the denial, suspension or revocation of a license, to determine whether a
26 crime or act is substantially related to the qualifications, functions, or duties of the
27 business or profession it regulates.

28 (b) This section shall become inoperative on July 1, 2020, and, as of January 1,
29 2021, is repealed.

30 8. Section 482 of the Code states:

31 (a) Each board under the provisions of this code shall develop criteria to evaluate
32 the rehabilitation of a person when:

33 (1) Considering the denial of a license by the board under Section 480; or

34 (2) Considering suspension or revocation of a license under Section 490.

35 (b) Each board shall take into account all competent evidence of rehabilitation
36 furnished by the applicant or licensee.

37 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
38 2021, is repealed.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that the applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive evidence
8 of the fact that the conviction occurred, but only of that fact, and the board may inquire
9 into the circumstances surrounding the commission of the crime in order to fix the
10 degree of discipline or to determine if the conviction is substantially related to the
11 qualifications, functions, and duties of the licensee in question.

12 As used in this section, “license” includes “certificate,” “permit,” “authority,”
13 and “registration.”

14 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
15 2021, is repealed.

16 10. Section 4301 of the Code states:

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

20 ...

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

24 ...

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

 ...

 (k) 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.

 (l) The conviction of a crime substantially related to the qualifications, functions,
 and duties of a licensee under this chapter. The record of conviction of a violation of
 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
 regulating controlled substances or of a violation of the statutes of this state regulating
 controlled substances or dangerous drugs shall be conclusive evidence of
 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
 evidence only of the fact that the conviction occurred. The board may inquire into the
 circumstances surrounding the commission of the crime, in order to fix the degree of
 discipline or, in the case of a conviction not involving controlled substances or

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Involving Dishonesty, Fraud, and Deceit)**

3 13. Respondent's application is subject to denial under section 480, subdivision(a)(2) in
4 that she committed acts involving dishonesty, fraud, and deceit with the intent to substantially
5 benefit herself. The circumstances are as follows:

6 a. On or about the afternoon of May 8, 2017, the Hemet Police Department was
7 dispatched to a JC Penney department store in reference to an employee embezzlement
8 investigation. Upon arrival, officers spoke to the store's loss prevention officer who stated that
9 she had been investigating an employee (Respondent) suspected of embezzlement for the
10 previous 90 days. Officers spoke to Respondent who admitted that she would bring in receipts
11 from past purchases at the store, and perform a return transaction. The return was credited to her
12 credit card, but she did not return the merchandise. Respondent further stated that she would use
13 other employees' identification numbers to perform the aforementioned returns to avoid getting
14 caught. Respondent told the officers that she embezzled from the store because she was having
15 financial difficulties and needed the money. The total approximate loss to the store was \$1,250.
16 Respondent was arrested and booked for embezzlement.

17 b. As a result of the arrest, on June 13, 2017, the Riverside County District
18 Attorney filed a complaint charging Respondent with misdemeanor grand theft in excess of \$400
19 (Pen. Code, § 487(a)). On December 15, 2017, Respondent pled guilty to the charge. The court
20 deferred entry of judgment for a period of 100 days so that Respondent could complete the
21 court's Deferred Entry of Judgment Program. On March 15, 2018, the court found that
22 Respondent successfully completed the program. The plea of guilty was set aside, and the
23 complaint and case were dismissed.

24 **SECOND CAUSE FOR DENIAL OF APPLICATION**

25 **(June 12, 2019 Criminal Conviction for DUI on January 10, 2019)**

26 14. Respondent's application for licensure is subject to denial under section 480,
27 subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime that is
28 substantially related to the qualifications, duties, and functions of a registered pharmacy

1 technician. Said conviction would be a ground for discipline under section 4301, subdivision (I)
2 of the Code for a registered pharmacy technician. The circumstances are as follows:

3 a. On or about June 12, 2019 in a criminal proceeding entitled *People of the State*
4 *of California vs. Evelyn Angelica Rubalcavagomez, aka Evelyn Angelica Rubalcava*, in Riverside
5 County Superior Court, case number BAM1901086, Respondent was convicted on her plea of
6 guilty to violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
7 concentration (BAC) of .08 percent or higher, a misdemeanor. In exchange for the plea, the court
8 dismissed an additional count of driving under the influence of alcohol (Veh. Code, § 23152(a)).
9 Respondent was granted summary probation for 36 months, and committed to the custody of the
10 Riverside County Sheriff for 18 days, with pre-custody credit for one day, to be served in the
11 Work Release Program. Respondent was ordered to install an Ignition Interlock Device on her
12 vehicle for 12 months, and complete an 18-month Offender Drinking Driver Program.

13 b. The facts that led to the conviction are that on or about January 10, 2019, at
14 approximately 2 a.m., California Highway Patrol (CHP) officers observed Respondent driving her
15 vehicle in an unsafe manner. After conducting an enforcement stop, the CHP officers observed
16 that Respondent's eyes were red and watery. After directing Respondent out of her vehicle, the
17 CHP officers conducted a series of pre-Field Sobriety Test questions. Respondent had a strong
18 odor of alcohol on her breath. Respondent was unable to complete the Field Sobriety Tests as
19 explained and demonstrated by the CHP officers. Respondent provided two breath samples that
20 were analyzed by the Preliminary Alcohol Screening device with a BAC of .180 and .166 percent,
21 respectively. Respondent was arrested for driving under the influence.

22 **THIRD CAUSE FOR DENIAL OF APPLICATION**

23 **(June 12, 2019 Criminal Conviction for DUI on February 24, 2019)**

24 15. Respondent's application for licensure is subject to denial under section 480,
25 subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime that is
26 substantially related to the qualifications, duties, and functions of a registered pharmacy
27 technician. Said conviction would be a ground for discipline under section 4301, subdivision (I)
28 of the Code for a registered pharmacy technician. The circumstances are as follows:

1 a. On or about June 12, 2019 in a criminal proceeding entitled *People of the State*
2 *of California vs. Evelyn Angelica Rubalcavagomez, aka Evelyn Angelica Rubalcava*, in Riverside
3 County Superior Court, case number BAM1901864, Respondent was convicted on her plea of
4 guilty to violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
5 concentration (BAC) of .08 percent or higher, a misdemeanor. Respondent admitted, and the
6 court found true, that her BAC was 0.15 percent or more, within the meaning of Vehicle Code
7 section 23578. In exchange for the plea, the court dismissed an additional count of driving under
8 the influence of alcohol (Veh. Code, § 23152(a)). Respondent was granted summary probation
9 for 60 months, and committed to the custody of the Riverside County Sheriff for 30 days, with
10 pre-custody credit for one day. The 29 days were to be served in the Work Release Program.
11 Respondent was ordered to wear a Continuous Alcohol Monitoring device for 60 days, complete
12 a MADD program, install an Ignition Interlock Device on her vehicle for 12 months, and
13 complete an 18-month Offender Drinking Driver Program. The sentence was ordered to run
14 concurrently with the sentence imposed in case number BAM1901086, described in paragraph
15 14, above.

16 b. The facts that led to the conviction are that on or about February 24, 2019, at
17 approximately 1 a.m., Hemet Police Department patrol officers were traveling on a northbound
18 road when Respondent, traveling in the opposite direction, swerved into their lane and nearly
19 collided with their patrol vehicle. The officers proceeded following Respondent and observed her
20 driving in an unsafe manner. After conducting an enforcement stop, the officers directed
21 Respondent out of her vehicle. The officers observed that Respondent exhibited the signs and
22 symptoms of being under the influence of alcohol: slow/slurred speech, watery eyes, a slightly
23 unsteady gait, and a mild odor of alcohol on her breath. Respondent was unable to complete the
24 Field Sobriety Tests as explained and demonstrated by the officers. Respondent provided two
25 breath samples that were analyzed by the Preliminary Alcohol Screening device with a BAC of
26 .167 and .160 percent, respectively. Respondent was arrested for driving under the influence.

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(Two Misdemeanor Convictions Involving the Consumption of Alcohol)

16. Respondent’s application for licensure is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that she was convicted of two separate misdemeanor offenses involving the consumption of alcohol, as described in paragraphs 14 and 15, above, which are incorporated herein by reference. Said convictions would be grounds for discipline under section 4301, subdivision (k) of the Code for a registered pharmacy technician.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Alcohol)

17. Respondent’s application for licensure is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that on or about January 10, 2019, and February 24, 2019, as described in paragraphs 14 and 15, above, and incorporated herein by reference, Respondent used alcohol in a manner that was dangerous and injurious to herself and to others, which would be a ground for discipline under section 4301, subdivision (h) of the Code for a registered pharmacy technician.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

18. Respondent’s application for licensure is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that her conduct, as described in paragraphs 13-17 above, which are incorporated herein by reference, was unprofessional, and would be a ground for discipline under section 4301 of the Code for a registered pharmacy technician.

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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 of Pharmacy issue a decision:

- 1. Denying the application of Evelyn Angelica Rubalcava, also known as Evelyn Angelica Rubalcava Gomez, for a Pharmacy Technician Registration;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: January 21, 2020



ANNE SODERGREN
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant