

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

In the Matter of the Accusation
Against:

RUZANNA NIKOGOSYAN,

Pharmacy Technician License
No. TCH 81186

Respondent.

Case No. 5567

OAH No. 2016040087

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 March 1, 2017.

It is so ORDERED on January 30, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation
Against:

RUZANNA NIKOGOSYAN,

Pharmacy Technician License
No. TCH 81186

Respondent.

No. 5567

OAH No. 2016040087

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California heard this matter on November 21, 2016, in Los Angeles, California.

Heather Vo, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Ruzanna Nikogosyan (respondent) appeared and represented herself.

At the hearing, copies of the following letters were marked for identification: (1) letter dated May 12, 2016 from Julie Dakov (marked as exhibit B); and (2) letter dated April 23, 2016 from Rocky Rokni (marked as exhibit E). The record was held open until December 5, 2016, for respondent to submit these letters with original signatures, and until December 12, 2016, for complainant to file and serve a response, if any. Not having received any documents on December 5, 2016, the record was closed. On December 7, 2016, both letters with original signatures were filed and received. On December 8, the ALJ, on her own motion, re-opened record and ordered that complainant shall be permitted to file and serve a response, if any, by December 15, 2016. Not having received any response from complainant on December 15, 2016, exhibits B and E were admitted into evidence pursuant to Government Code section 11513, subdivision (d). The record was closed and the matter was submitted for decision.

//

//

FACTUAL FINDINGS

1. On January 23, 2008, the Board issued Pharmacy Technician Registration Number TCH 81186 (license) to respondent. Respondent's license was in full force and effect at all times relevant herein and was scheduled to expire on December 31, 2015,¹ unless renewed.

2. On November 27, 2015, complainant filed the Accusation in her official capacity. Respondent timely filed a Notice of Defense and a Request for Hearing.

3. On February 10, 2015, respondent was convicted on her plea of nolo contendere to violating Penal Code section 487, subdivision (a),² grand theft, a misdemeanor. (Superior Court of California, Los Angeles County, case number LA078417.)

4. The facts and circumstances surrounding respondent's conviction are that, in May 2014, respondent stole merchandise from her former employer, Toluca Pharmacy. Although the evidence did not establish the exact amount of loss to Toluca Pharmacy as a result of her theft, it is noted that, in the criminal case, respondent was ordered to pay restitution in the amount of \$3,627.19. Therefore, it is reasonable to infer that respondent stole merchandise of at least \$3,627.19 in value from her former employer.

5. For her conviction of grand theft, imposition of sentence was suspended, and respondent was placed on summary probation for three years under terms and conditions, including performance of 45 days of Cal Trans work, payment of \$230 in fines and assessments, and payment of \$3,627.19 in restitution to the victim.

6. Respondent completed the 45 days of Cal Tans work, and she has paid all of the fines, assessments, and restitution. Respondent's probation is scheduled to expire on February 10, 2018.

7. At the administrative hearing, Board Inspector Anna Kalantar testified regarding the qualifications, functions, and duties of a pharmacy technician. Ms. Kalantar has been a Board inspector for the past two years. Previously, she worked as a dispensing pharmacist at retail pharmacies, hospital pharmacies, and a long-term care facility pharmacy for approximately nine years. Ms. Kalantar explained that pharmacy technicians act as assistants to pharmacists and share the same responsibilities and duties as pharmacists. Tasks performed by a pharmacy technician include receiving prescriptions; obtaining information from the patient, such as date of birth and address; and dispensing medication. Pharmacy technicians always work under the supervision of pharmacist. However, retail,

¹ Despite the expiration of the license, the Board retains its jurisdiction to proceed with this disciplinary proceeding against respondent or to render a decision suspending or revoking the license pursuant to Business and Professions Code section 4300.1.

² Grand theft is theft of property, money, or labor valued above \$950. (See Pen. Code, § 487 subd. (a).)

hospital, and long-term care facility pharmacies maintain different ratios of pharmacists to pharmacy technicians. The ratios range between one-to-one and one-to-two, depending on the setting. Nevertheless, even with a one-to-one ratio, Ms. Kalantar asserted that it would be impossible for a pharmacist to have complete control over the actions of a pharmacy technician. Therefore, Ms. Kalantar emphasized that pharmacy technicians must be honest, truthful, and trustworthy because they have access to confidential patient information and controlled substances which can be diverted and sold at a premium price.

8. Respondent is a 45-year-old woman. She obtained her certificate as a pharmacy technician from Los Angeles ORT College in 2007. From 2007 to 2013, respondent worked as a pharmacy technician at Kovacs' Pharmacy. From January 2014 to May 2014, respondent was employed as a pharmacy technician at Toluca Pharmacy. Due to the theft, respondent was terminated from Toluca Pharmacy. From 2015 until the present, respondent has been employed at Walgreens Pharmacy as a beauty adviser.

9. At the administrative hearing, respondent denied committing any theft. Respondent claimed that she had taken some over-the-counter medication from Toluca Pharmacy but she had paid her former employer for the merchandise. During cross-examination, however, respondent could not explain what type of the-counter-medication could be worth \$3,627.19. Respondent further contended that she had paid for all of the over-the-counter medication in cash and therefore did not have any receipts to substantiate her claim. Given the implausibility of respondent's testimony, her denial was not credible.

10. Respondent submitted several character reference letters from her colleagues and a former landlord which are described, in part, below.

11. Julie Dakov, Pharm. D. had worked with respondent at Kovac's Pharmacy from 2010 to 2013. In a letter dated May 12, 2016, Ms. Dakov wrote that respondent

demonstrated [a] strong work ethic as well as exhibited a high level of knowledge. [Respondent] also proved to have high moral standards and never gave me any issues during the period she worked with me. She was well liked and was always prepared to work at the highest level. [Respondent] showed she is trustworthy, honest, and always willing to help. (Ex. B.)

12. In a letter dated May 6, 2016, Alex Iraj Zamanian, M.D., who was respondent's employer for two years, wrote that respondent

Demonstrated [a] high level of commitment and knowledge in all the tasks she performed. She played an essential part as part of the team. [Respondent] is a person of highest moral standards and work ethics. She had amazing skills in communicating with patients. She was always loved and respected by coworkers. (Ex. C.)

13. In a letter dated May 3, 2016, William Orellana, who worked with respondent at the Walgreens Pharmacy in North Hollywood wrote that respondent "conducted herself with the highest moral standards and work ethics. [Respondent] also demonstrated high levels of commitment in all her tasks and also played an essential part of as part of the team." (Ex. D.)

14. Complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 18.75 hours of legal services at rates ranging from \$120 to \$170 per hour for total costs claimed of \$2,875. These costs are reasonable.

15. Respondent earns approximately \$1,500 in monthly income as a beauty adviser at Walgreens. She estimates that her monthly expenses, including food, rent, and car expenses, total approximately \$1,500 per month.

LEGAL CONCLUSIONS

1. The standard of proof for the Board to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

2. Business and Professions Code section 4301, in pertinent part, provides:

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.

[¶] ... [¶]

(I) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee. . .

3. As set forth in Factual Finding 3, respondent was convicted of grand theft. Although respondent denied committing the theft, her denial was not credible. Additionally, by way of her plea of nolo contendere to and conviction of violating Penal Code 487, respondent is guilty of the crime of grand theft. Respondent's conviction is "conclusive

evidence" of her guilt of the offenses charged, and she may not impeach that conviction in this administrative proceeding. (Bus. & Prof. Code, §§ 493, 4301(*l*); *Arneson v. Fox* (1980) 28 Cal.3d 440, 452.)

4. California Code of Regulations, title 16, section 1770 provides that "a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

5. Respondent's conviction for grand theft is substantially related to the qualifications, functions, and duties of a pharmacy technician. As Ms. Kalantar's testimony demonstrated, honesty and trustworthiness are essential characteristics of a pharmacy technician because a pharmacy technician has unrestricted access to confidential patient information and to controlled substances. Respondent's conviction for grand theft inherently involves dishonesty. Therefore, it evidences respondent's potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare and constitutes cause to discipline respondent's license under Business and Professions Code section 4301, subdivision (*l*).

6. Based on Factual Findings 3 through 7, cause exists to suspend or revoke respondent's license as a pharmacy technician pursuant to Business and Professions Code sections 490 and 4301, subdivision (*l*), in conjunction with California Code of Regulations, title 16, section 1770, in that respondent was convicted of a crime which is substantially related to the qualifications, functions, or duties of a pharmacy technician.

7. Based on Factual Findings 3 through 6, cause exists to suspend or revoke respondent's license as a pharmacy technician pursuant to Business and Professions Code section 4301, subdivision (*f*), in that respondent was convicted of a crime which involved dishonesty.

8. The Board's Disciplinary Guidelines (Rev. 10/2007) (Guidelines) set forth categories of violations and recommended penalties. Violations of section 4301, subdivisions (*f*) and (*l*), constituting unprofessional conduct, are Category III violations where the minimum penalty is revocation stayed, 90 days of actual suspension, and three to five years' probation. The maximum penalty is revocation.

9. The Guidelines specify that, in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the following factors should be considered: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record; (4) prior warnings; (5) number and or variety of current violations; (6) the nature and severity of the act(s) or offense(s), or crime(s); (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 dismissal proceedings pursuant to section 1203.4 of the Penal Code;

(13) the time that has elapsed since commission of the act(s) or offenses(s); (14) whether the conduct was intentional or negligent; and (15) financial benefit to the respondent from the misconduct. (Guidelines, p. 3.)

10. Applying the Guidelines' recommended discipline and rehabilitation criteria, outright revocation of respondent's license is warranted. Respondent has suffered a conviction for grand theft that is substantially related to the qualifications, functions, or duties of a pharmacy technician. Respondent's misconduct was serious in that respondent stole at least \$3,627.19 worth of merchandise from her former employer, Toluca Pharmacy. Nevertheless, respondent's misconduct was not patient-related, nor did she cause any patient harm. Respondent has completed her work for Cal Trans, and she has paid all of the fines, fees, and restitution related to the criminal case. Respondent's conviction and the underlying act occurred less than three years ago. Respondent is on criminal probation until February 2018.

11. However, respondent denied committing the theft and was less than candid in her testimony at the administrative hearing. Respondent's denial of her crime and her lack of candor indicate that she has not accepted personal responsibility for, nor has she gained any insight into, her misconduct. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Without accepting personal responsibility for her prior actions, respondent's rehabilitation remains incomplete. As to the reference letters submitted by respondent, none of the authors appears to be aware of respondent's conviction or of this disciplinary matter against her. Therefore, their character evaluations carried less weight. In consideration of these factors, it would be in the public interest to revoke respondent's license.

12. Under Business and Professions Code section 125.3, the Board may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of this matter. As set forth in Factual Findings 14, the costs claimed are \$2,875, and these costs are reasonable.

13. Given the nature of the order below, it would be unnecessarily punitive to require respondent to pay the Board's costs at this time. However, it is reasonable to require her to pay the Board's costs if she ever seeks reinstatement of her license.

ORDER

Pharmacy Technician Registration Number TCH 81186 issued to respondent Ruzanna Nikogosyan is revoked. Respondent shall relinquish her technician license to the board within ten (10) days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of her revoked technician license for three (3) years from the effective date of this decision. A condition of reinstatement shall be that the respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the board.

As an additional condition precedent to reinstatement of her revoked technician license, respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$2,875. Said amount shall be paid in full prior to the reapplication or reinstatement of her revoked technician license, unless otherwise ordered by the board.

DATED: January 6, 2017

DocuSigned by:
Ji-Lan Zang
C57B808F0CC44EC...
JI-LAN ZANG
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

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5567

12 **RUZANNA NIKOGOSYAN**
15430 Archwood Street
13 Van Nuys, CA 91406

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 81186

15
16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 23, 2008, the Board issued Pharmacy Technician Registration
23 No. TCH 81186 to Ruzanna Nikogosyan (Respondent). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 December 31, 2015, unless renewed.

26 **JURISDICTION**

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

1 4. Section 4300 provides in pertinent part, that every license issued by the Boards is
2 subject to discipline, including suspension or revocation.

3 5. Section 4300.1 states:

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

9 STATUTORY PROVISIONS

10 6. Section 4301 states, in pertinent part:

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

14

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

18

19 "(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled substances or
27 dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment."

8 REGULATORY PROVISIONS

9 7. 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 FIRST CAUSE FOR DISCIPLINE

17 (Conviction of a Substantially Related Crime)

18 8. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
19 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
20 convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy
21 technician as follows:

22 a. On or about February 10, 2015, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand
24 theft by embezzlement] in the criminal proceeding entitled *The People of the State of California v.*
25 *Ruzanna Nikogosyan* (Super. Ct. L.A. County, 2015, No. LA078417). The Court ordered
26 Respondent to pay restitution and placed her on 36 months probation, with terms and conditions.

27 b. The circumstances surrounding the conviction are that on or about June 2, 2014,
28 Respondent was served with a search and arrest warrant based on a theft reported by her former

1 employer, Toluca Pharmacy. The owner of Toluca Pharmacy filed a report after observing
2 Respondent on store video, filling prescriptions and taking them in her vehicle on a regular basis.
3 The estimated loss to her employer as a result of her thefts was \$18,000.00.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Acts Involving Dishonesty, Fraud, Deceit, or Corruption)**


6 9. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that
7 Respondent committed acts involving dishonesty, fraud, deceit, or corruption with the intent to
8 substantially benefit herself, or substantially injure another. Complainant refers to, and by
9 reference incorporates, the allegations set forth above in paragraph 8, as though set forth fully.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 81186, issued to
14 Ruzanna Nikogosyan;
- 15 2. Ordering Ruzanna Nikogosyan to pay the Board the reasonable costs of the
16 investigation and enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: 11/27/15


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

21
22
23
24 LA2015502032
51942489.doc