

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

In the Matter of the Accusation Against:

MANIVANH MEUANGKHOT,

Pharmacy Technician Registration Number
TCH 62846,

Respondent.

Case No. 5700

OAH No. 2016040416

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 September 9, 2016.

It is so ORDERED on August 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 14, 2016, in San Diego, California.

Stephen A. Aronis, Deputy Attorney General, Department of Justice, represented complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Todd J. Hilts, Attorney at Law, represented respondent, Manivanh Meuangkhot, who was not present at the hearing.

The matter was submitted on June 14, 2016.

FACTUAL FINDINGS

Background

1. On June 13, 2005, the board issued to respondent Pharmacy Technician Registration Number TCH 62846. The registration expires on January 31, 2017, unless renewed.

2. On January 22, 2016, complainant signed the accusation alleging that on August 31, 2014, respondent self-administered and was under the influence of methamphetamine. Complainant requested revocation of respondent's registration.

3. At the hearing, complainant amended the accusation by interlineation without objection, changing section 4301 subdivision "(j)" to subdivision "(h)" on line 24 of page 3.

Testimony and Report of Officer Anthony Breis

4. San Diego Police Department Officer Anthony Breis testified at the hearing. Officer Breis has been a police officer with the San Diego Police Department for eight years. In addition to his academy training, Officer Breis has been certified as a drug recognition expert, and has received 120 additional hours of training by the California Highway Patrol in the recognition and detection of persons under the influence of controlled substances and alcohol. The following circumstances surrounding respondent's arrest were obtained from Officer Breis's testimony and arrest report:¹

On August 31, 2014, at 3:22 a.m., Officer Breis responded to a call of a possible residential burglary in progress. Upon arrival, a resident of the house told Officer Breis that "his baby mama" was "tripping out." Officer Breis entered the house to ensure the safety of everyone inside. He found respondent in a bedroom with a two or three-year-old child, with the door slightly ajar and blocked by a chair. Officer Breis instructed respondent to come out of the room. Respondent immediately told Officer Breis that she had been "smoking meth for two days." Respondent took Officer Breis to a bedroom where she pointed to a small Ziploc baggie containing a small amount of substance Officer Breis believed to be methamphetamine. Officer Breis observed several indicators that respondent was under the influence of a controlled substance, including: dilated pupils, elevated pulse, paranoia, strong thirst, and making random statements. Officer Breis arrested respondent for possession of a controlled substance and being under the influence of a controlled substance. After taking respondent to the station, Officer Breis conducted an additional examination to determine whether respondent was under the influence. Again, he noted respondent had dilated pupils, elevated pulse, eyelid flutters, and muscle rigidity. Respondent admitted to taking "a few hits" of methamphetamine before midnight. Respondent stated she began using methamphetamine after she lost her job as a pharmacy technician. Officer Breis administered a portable breath test and determined respondent was not under the influence of alcohol. Respondent provided a blood sample, which tested positive for methamphetamine.

¹ The report was received under *Lake v. Reed* (1997) 16 Cal.4th 448, which considered the admissibility of hearsay evidence under Government Code section 11513 in an administrative proceeding. That opinion concluded that a law enforcement officer's direct observations memorialized in an arrest report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The opinion concluded that admissions by a party memorialized in such a report were admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the Supreme Court concluded other hearsay statements set forth in the officer's report could be used to supplement or explain other evidence, but were not sufficient by themselves to support a factual finding unless such hearsay would be admissible over objection in civil actions.

On August 24, 2015, in the Superior Court of California, San Diego County, respondent pled guilty to a misdemeanor violation of Health and Safety Code section 11550, subdivision (a), being under the influence of a controlled substance. As a result of the plea, the court deferred entry of judgment for 18 months and ordered respondent to complete a drug diversion program pursuant to Penal Code section 1000.

Testimony of Inspector Joshua Lee

5. Joshua Lee, D.Pharm., has been a licensed pharmacist since 2006 and a board inspector for five years. Prior to working for the board, he worked as a retail pharmacist for five years. Inspector Lee testified about the duties of a pharmacy technician and the dangers of a pharmacy technician being impaired while working.

Respondent's Evidence

6. Respondent was not present at the hearing. She submitted a certificate of completion dated March 22, 2016, from Central East Regional Recovery Center showing she completed a Penal Code 1000 10 topic substance abuse course.

Cost Recovery

7. Complainant submitted a certification of costs and requested cost recovery pursuant to Business and Professions Code section 125.3. The certification contained information related to services provided by the Attorney General's Office and included prosecution costs that totaled \$2,985. The evidence established that those costs were reasonably incurred. The certification complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1). No evidence was received regarding respondent's ability to pay costs.

LEGAL CONCLUSIONS

The Pharmacy Technician Registration

1. No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician (Bus. & Prof. Code, § 4202, subd. (e).) An applicant for a pharmacy technician registration must establish that he or she either holds an associate of arts degree in pharmacy technology, or has completed a specified course of training, or has graduated from an approved or recognized school of pharmacy, or has been certified by the Pharmacy Technician Certification Board (PTCB). (Bus. & Prof. Code, § 4202.) No examination is required to obtain a pharmacy technician registration, although an examination is required to obtain certification from the PTCB.

Duties of a Pharmacy Technician

2. A “pharmacy technician” assists a pharmacist in the performance of pharmacy related duties. (Bus. & Prof. Code, § 4938.) Under the direct supervision and control of a pharmacist, a pharmacy technician is authorized to perform packaging, manipulative, repetitive and other non-discretionary tasks related to the processing of prescriptions in a licensed pharmacy. (Bus. & Prof. Code, § 4115; Cal. Code Regs., tit. 16, § 1793.)

The board’s disciplinary guidelines state that pharmacy technicians are issued a license based on minimal education, training requirements or certification, and that no examination is required to hold registration. The board’s guidelines note that pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

Burden and Standard of Proof

3. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies; the preponderance of the evidence standard of proof applies in proceedings to revoke nonprofessional or occupational licenses. The sharp distinction between professional licenses and nonprofessional licenses supports the distinction in the standards of proof. Because a professional license represents the fulfillment of extensive educational, training and testing requirements, a licensee has an extremely strong interest in retaining the license that he or she has expended so much effort to obtain. The same cannot be said for a licensee’s interest in retaining a nonprofessional license even though an applicant for an occupational (as opposed to a professional) license is required to complete certain coursework and pass an examination. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453-454; *Imports Performance, et al., v. Bureau of Automotive Repair* (2012) 201 Cal.App.4th 911, 916.)

The preponderance of the evidence standard applies in this proceeding because a pharmacy technician registration is a nonprofessional/occupational license. However, the application of the preponderance of the evidence standard is not critical to the outcome in this matter because the same conclusions would be reached even if the clear and convincing evidence standard were applied.

Applicable Statutes

4. Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . . [¶]

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

[¶] . . . [¶]

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

5. Health and Safety Code section 11550, subdivision (a), provides: “A person shall not use, or be under the influence of any controlled substance that is . . . specified in subdivision (d) . . . of Section 11055”

6. Health and Safety Code section 11055, subdivision (d)(2), lists methamphetamine as a Schedule II controlled substance.

Evaluation

7. Licensees in the health care industry are required to abide by numerous laws and regulations established to protect the health and safety of the public. This includes abiding by laws that govern the licensee’s activities that may not be directly related to the professional license but that could impact the public’s health and safety outside the work environment. The evidence established respondent was under the influence of methamphetamine, in violation of Health and Safety Code section 11550, subdivision (a).

Cause Exists to Discipline Respondent’s Registration

8. Cause exists to revoke respondent’s registration pursuant to Business and Professions Code section 4301, subdivision (h). Respondent self-administered a controlled substance in a manner as to be dangerous or injurious to herself or others.

9. Cause exists to revoke respondent’s registration pursuant to Business and Professions Code section 4301, subdivision (j). Respondent violated Health and Safety Code section 11550, subdivision (a), when she used or was under the influence of methamphetamine.

Evaluation of Appropriate Discipline

10. California Code of Regulations, title 16, section 1760, states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 10/2007), which are hereby incorporated by reference.

Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems.

11. The board's Disciplinary Guidelines list the following factors to be considered in determining the degree of discipline:

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

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record

12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

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

12. Applying the board's criteria in this matter: The conduct did not occur in the course of respondent's job as a registered pharmacy technician; no consumer or member of the public was harmed; respondent has no prior discipline or criminal record; the conduct took place almost two years ago; respondent received a Penal Code 1000 deferral, and completed a drug treatment program as part of diversion; and respondent did not furnish drugs for monetary gain. As for rehabilitation, it is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The evidentiary significance of an individual's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*In Re Gossage* (2000) 23 Cal.4th 1080, 1098; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Because persons "under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an individual did not commit additional crimes or continue addictive behavior while in prison or while on probation or on parole." (*Gossage, supra*, 23 Cal.4th, p. 1099.) Respondent provided no evidence of rehabilitation other than completion of her court-ordered substance abuse course.

13. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy technicians have access to confidential personal and financial information of consumers and to highly regulated medications and devices. The board's Disciplinary Guidelines state that revocation is typically the appropriate penalty when the grounds found for discipline involve significant misconduct. Here, respondent's misconduct was significant because she was under the influence of a controlled substance. It was particularly concerning that this occurred in the presence of a young child. In the absence of additional evidence of rehabilitation, revocation is the only measure of discipline that will protect the public.

Cost Recovery

14. Complainant is seeking recovery of the reasonable costs of prosecution. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.”

The Supreme Court set forth factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a “subjective” good faith belief in the merits of his or her position; whether the licensee raised a “colorable challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

Applying the *Zuckerman* criteria, respondent did not receive a reduction in the severity of the discipline imposed. Respondent did not appear at hearing and did not raise a “colorable challenge” to the proposed discipline. Respondent presented no evidence of her ability to pay costs. Finally, the costs were reasonable in light of the alleged violation. Respondent shall be ordered to pay costs in the amount of \$2,985 as a condition of reinstatement at the board’s discretion.

ORDER

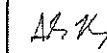
Pharmacy technician license number TCH 62846, issued to respondent, Manivanh Meuangkhot, is revoked. Respondent shall relinquish her technician license to the board within 10 days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of her revoked technician license for three years from the effective date of this decision.

As a condition of reinstatement, respondent shall be certified as defined in Business and Professions Code section 4202(a)(4) and provide satisfactory proof of certification to the board.

As a 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 \$2,985. 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: July 6, 2016

DocuSigned by:



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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

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

13 In the Matter of the Accusation Against:

Case No. 5700

14 **MANIVANH MEUANGKHOT**
15 **6381 Medio Street**
San Diego, CA 92114

ACCUSATION

16 **Pharmacy Technician Registration**
17 **No. TCH 62846**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about June 13, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 62846 to Manivanh Meuangkhot (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on January 31, 2017, unless renewed.

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JURISDICTION

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

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

6. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

7. Section 4301 of the Code states:

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

....

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

1
2 (j) The violation of any of the statutes of this state, or any other state, or of the
3 United States regulating controlled substances and dangerous drugs. . . .

4 **REGULATORY PROVISIONS**

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

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

13 **COSTS**

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

20 **DRUG**

21 10. Methamphetamine is a Schedule II controlled substance as designated by Health
22 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business
23 and Professions Code section 4022.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Dangerous Use of a Controlled Substance on August 31, 2014)**

26 11. Respondent has subjected her registration to discipline under section 4301,
27 subdivision (j) of the Code in that she administered to herself and was under the influence of the
28 controlled substance methamphetamine in a manner as to be dangerous or injurious to herself or
others. The circumstances are as follows:

a. On or about the 3:22 a.m. on August 31, 2014, the San Diego Police
Department responded to a call of a possible burglary in progress. When officers arrived at the

1 reported residence, they made contact with a male who stated that Respondent was in a bedroom
2 and allowed the officers to enter the premises. The officers made contact with Respondent who
3 immediately stated that she had been smoking methamphetamine for two days. Respondent led
4 the officers to her bedroom where they located a small amount of what appeared to be
5 methamphetamine residue on a mirror and in a small baggie. An examination of Respondent
6 indicated she was under the influence. Respondent was arrested for possession of
7 methamphetamine, and being under the influence of methamphetamine. Respondent submitted to
8 a drug evaluation; she had dilated pupils, an elevated pulse, paranoia, strong thirst, bad breath,
9 eyelid flutters, and muscle rigidity. Officers discovered that there was not enough
10 methamphetamine to conduct a presumptive test, so the possession charge was dropped.
11 Respondent provided a sample of blood that was subsequently analyzed as positive for
12 amphetamines and methamphetamine.

13 b. As a result of the arrest, on or about August 24, 2015, in a criminal proceeding
14 entitled *People of the State of California v. Manivah Noi Meuangkhot*, in San Diego County
15 Superior Court, case number M196490, Respondent pled guilty to violating Health and Safety
16 Code section 11550, subdivision (a), under the influence of a controlled substance, to wit,
17 methamphetamine, a misdemeanor.

18 c. As a result of the plea, the court deferred entry of judgment for 18 months and
19 Respondent was ordered to enroll in and complete a drug diversion program pursuant to Penal
20 Code section 1000.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Violation of California Statutes Regulating Controlled Substances)**

23 12. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
24 Code for unprofessional conduct in that on or about August 31, 2014, Respondent violated Health
25 and Safety Code section 11550, subdivision (a), as detailed in paragraph 11, above, when
26 Respondent was under the influence of methamphetamine.

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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:

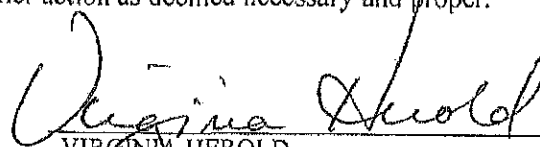
1. ~~Revoking or suspending Pharmacy Technician Registration Number TCH-62846,~~
issued to Manivanh Meuangkhot;

2. Ordering Manivanh Meuangkhot to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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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