

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

In the Matter of the Accusation Against:

**MARAM B. AL-BADAWI,
Pharmacy Technician Registration No. TCH 152709,
Respondent.**

Agency Case No. 6289

OAH No. 2019060679

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 26, 2020.

It is so ORDERED on February 25, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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

In the Matter of the First Amended Accusation against:

MARAM B. AL-BADAWI,

Pharmacy Technician Registration No. TCH 152709,

Respondent.

Agency Case No. 6289

OAH No. 2019060679

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 17, 2019, in Los Angeles, California.

Morgan Malek, Deputy Attorney General, appeared and represented complainant Anne Sodergren, Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

No appearance was made by or on behalf of respondent Maram B. Al-Badawi.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 17, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 25, 2016, the Board issued Original Pharmacy Technician Registration number TCH 152709 to respondent. Respondent's registration expired on February 28, 2019 and was cancelled on June 2, 2019.¹
2. On April 30, 2019, while acting in her official capacity, complainant brought an Accusation against respondent.
3. On May 10, 2019, respondent timely submitted a Notice of Defense.
4. On July 23, 2019, while acting in her official capacity, complainant filed and served a First Amended Accusation.
5. Notice of hearing was given as required by law on August 14, 2019.

¹ Pursuant to Business and Professions Code section 118, subdivision (b), the expiration of the license does not deprive the Board of its authority to continue this disciplinary proceeding against respondent.

Conviction

6. On January 30, 2019, respondent entered a guilty plea and was convicted of theft in violation of Penal Code sections 484, subdivision (a), and 488, a misdemeanor. (*People v. Albadawi* (Super. Ct. Orange County, 2019, No. 18NM01784).)

7. The court suspended the imposition of sentence and placed respondent on informal probation for three years. The court ordered respondent to serve 10 days in jail or complete 10 days of CalTrans labor in lieu thereof, to pay fines and restitution, and to obey the law.

Facts and Circumstances

8. Respondent was employed as a pharmacy technician at Albertsons Companies (Albertsons) on December 30, 2016. She worked as a float technician at various separate locations, including Pavilions Pharmacy #2203 in Long Beach, Pavilions Pharmacy #2216 in Anaheim Hills, and Vons Pharmacy #2832 in La Verne.

9. On February 5, 2017, the pharmacist-in-charge at Pavilions Pharmacy #2216 reported to her District Pharmacy Manager the loss of phentermine, a Schedule IV narcotic commonly prescribed for weight loss. The pharmacist-in-charge suspected respondent of pilfering the missing medications because respondent had recently asked about the medication's side effects after trying phentermine from her sister's prescription.

10. On February 6, 2017, Albertsons sent the Board a Notification of Controlled Substance Drug Loss reporting the loss of 4 phentermine 30 mg capsules, 40 phentermine 37.5 mg tablets, and 15 phentermine 37.5 mg capsules from Pavilions Pharmacy #2216.

11. On February 28, 2017, Albertsons sent the Board a Notification of Controlled Substance Drug Loss reporting the loss of 37 phentermine 37.5 mg tablets and 16 phentermine 37.5 mg capsules from Pavilions Pharmacy #2203.

12. On February 28, 2017, Albertsons sent the Board a Notification of Controlled Substance Drug Loss reporting the loss of 43 phentermine 37.5 mg tablets and 48 phentermine 37.5 mg capsules from Vons Pharmacy #2832.

13... As part of its investigation, Albertsons interviewed respondent who admitted to stealing the medications from each location for her personal use to lose weight. Respondent signed a written statement, admitting that she "made a very bad decision by taking phentermine 37.5 mg, possibly other dosages[,] capsules[,] and tablets.....I just opened the bottle[,] dumped it in my hand and into my pocket." (Ex. 6, p. 45.)

14. On March 29, 2017, Albertsons reported the incident to the Long Beach Police Department. On January 29, 2018, the Anaheim City Attorney filed a criminal complaint initiating the criminal case referenced at Factual Findings 6-7.

Costs

15. Complainant incurred reasonable prosecution costs in the amount of \$5,890 and investigation costs in the sum of \$4,628.25, evidenced by a declaration and detailed billing statements.

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof to be used in these proceedings is a preponderance of the evidence because pharmacy technicians hold an occupational license. (See Evid. Code, § 115.) This conclusion is supported by the Board's Disciplinary Guidelines² (Guidelines), which provide: "Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist." (Guidelines, p. 43.) To obtain a license, an applicant must complete 240 hours of instruction covering, among other things, "the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy." (Cal. Code Regs., tit. 16, § 1793.6.)

2. These licensing prerequisites are not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856;

² "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." (Cal. Code Regs., tit. 16, § 1760.)

Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair (2011) 201 Cal.App.4th 911; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.)

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

4. Accordingly, complainant bears the burden of proving cause for disciplining respondent's pharmacy technician registration by a preponderance of the evidence.

Governing Law

5. Every license issued may be suspended or revoked. (Bus. & Prof. Code, § 4300, subd. (a).)

6. The Board shall take action against any licensee who engages in 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. (l), and 490);

B. 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. (Bus. & Prof. Code, § 4301, subd. (f).)

C. 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. (Bus. & Prof. Code, § 4301, subd. (h).)

D. 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. (Bus. & Prof. Code, § 4301, subd. (j).) Health and Safety Code section 11170 prohibits the self-administration of controlled substances.

7. In this case, respondent was convicted of theft based on her diversion of controlled substances from her employer. The crime is substantially related to the

qualifications, functions, and duties of a licensee because it evidences a present or potential unfitness to perform those duties authorized by her registration in a manner consistent with the public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1770.) Theft is an act involving dishonesty and deceit, and respondent committed the theft while on duty as a floating technician for three pharmacy locations and in the course of her relations as a licensee.

8. Respondent admitted to investigators that she administered to herself the diverted controlled substances for weight loss. By administering to herself phentermine without a prescription, respondent violated Health and Safety Code section 11170, a state statute regulating controlled substances.

9. Accordingly, complainant has established by a preponderance of the evidence that cause exists to discipline respondent's pharmacy technician registration under Business and Professions Code sections 490 and 4301, subdivisions (l), (f), (h), and (j), because she engaged in unprofessional conduct.

Mitigation and Rehabilitation

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

- A. The nature and severity of the act.
- B. The total criminal record.
- C. The time that has elapsed since commission of the act.

D. Whether respondent has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

E. Whether respondent has complied with any terms of parole, probation, restitution, or other sanctions lawfully imposed against respondent.

F. Evidence, if any, of rehabilitation submitted by respondent.

11. In this case, respondent was convicted of theft less than one year ago and she remains on informal probation. The nature of the crime specifically conflicted with her duties and responsibilities as a pharmacy technician to properly manage and dispense prescription medication. Respondent failed to appear and present any evidence of rehabilitation or mitigation.

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

Recovery of Costs

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

14. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. An agency must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency

must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay.

15. Complainant incurred reasonable costs in the total amount of \$10,518.25. However, ordering respondent to immediately pay costs in addition to revoking her license will be unduly punitive. Accordingly, complainant's costs are allowed in the amount of \$10,518.25, but payment is deferred until such time as respondent successfully petitions the Board for reinstatement of her registration or applies for any other Board-issued license.

ORDER

Pharmacy technician registration number TCH 152709 issued to respondent Maram B. Al-Badawi is revoked. Respondent shall pay the Board the amount of \$10,518.25, due and payable only as a condition precedent to reinstatement of respondent's registration or issuance of any other Board-issued license.

DATE: January 13, 2020

DocuSigned by:
Matthew Goldsby
MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6278
6 Facsimile: (213) 897-2804
Facsimile: (213) 897-2804
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

Case No. 6289

14 **MARAM B. AL-BADAWI**
15 **15239 La Subdia Drive**
Hacienda Heights, CA 91745

FIRST AMENDED ACCUSATION

16 **Pharmacy Technician Registration No. TCH**
17 **152709**

18 Respondent.

19 **PARTIES**

20 1. Anne Sodergren (“Complainant”) brings this First Amended Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Pharmacy (the “Board”),
22 Department of Consumer Affairs.

23 2. On or about January 25, 2016, the Board issued Pharmacy Technician Registration
24 Number TCH 152709 to Respondent Maram B. Al-Badawi (“Respondent”). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and expired on February 28, 2019, and has not been renewed.

27 ///

JURISDICTION

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

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

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 118, subdivision (b), provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 states:

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

1 qualifications, functions, and duties of the licensee in question.

2 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
3 ‘registration.’”

4 9. Section 4301 states, in pertinent part:

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

8

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

12

13 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
14 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
15 oneself, to a person holding a license under this chapter [Pharmacy Law], or to any other person
16 or to the public, or to the extent that the use impairs the ability of the person to conduct with
17 safety to the public the practice authorized by the license.

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
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
27 or 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

9 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
10 violation of or conspiring to violate any provision or term of this chapter or of the applicable
11 federal and state laws and regulations governing pharmacy, including regulations established by
12 the board or by any other state or federal regulatory agency. . . .”

13 10. Section 4022 of the Code states, in pertinent part:

14 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
15 humans or animals”

16 11. Section 4059 of the Code states:

17 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
18 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
19 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
20 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
21 3640.7.

22 12. Section 4060 of the Code states, in pertinent part:

23 “No person shall possess any controlled substance, except that furnished to a person upon
24 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
25 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
26 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
27 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
28 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of

1 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
2 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
3 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
4 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
5 labeled with the name and address of the supplier or producer. . . .”

6 13. Section 4301 of the Code states, in pertinent part:

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

10 “. . . .

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

14 “. . . .

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

20 “. . . .

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

23 14. Section 11170 of the Health & Safety Code states:

24 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

25 **REGULATORY PROVISION**

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

27 “For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5 **COST RECOVERY**

6 16. Section 125.3 of the Code states, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 **CONTROLLED SUBSTANCES**

11 17. Adipex-P, generic name phentermine, is a Schedule IV controlled substance as
12 defined in Health and Safety Code section 11057, subdivision (f)(4), and is categorized as a
13 dangerous drug pursuant to section 4022 of the Code.

14 **FACTS**

15 18. Respondent was hired as a pharmacy technician by Albertsons¹ on or about
16 December 30, 2016. Respondent was a float pharmacy technician, and she worked at Pavilions
17 Pharmacy #2203, Pavilions Pharmacy #2216, and Vons Pharmacy #2832. On or about February
18 5, 2017, the pharmacist-in-charge at Pavilions Pharmacy #2216 reported to her District Pharmacy
19 Manager the loss of phentermine products. Respondent was suspected with pilfering the missing
20 medications, since Respondent was new to the location and had reported to the pharmacist-in-
21 charge that Respondent wanted to lose weight. Respondent told the pharmacist-in-charge that she
22 had tried phentermine from her sister’s prescription and asked about side effects.

23 19. On or about March 29, 2017, Albertsons Pharmacy Compliance and Analytics Team
24 reported to the Board a loss of phentermine products from three different pharmacies due to
25 employee pilferage. Albertsons provided three DEA Form 106s, one for each loss, with the
26 following information:

27 _____
28 ¹ Albertsons owns and operates some pharmacies in grocery stores bearing the name “Vons” or
“Pavilions.”

PHARMACY	CONTROLLED SUBSTANCES LOST/STOLEN (AND COUNT)	POLICE REPORT NUMBER
Pavilions Pharmacy #2203 Long Beach, CA (PHY52179)	Phentermine 37.5 mg tablets, #37 Phentermine 37.5 mg capsules, #16	Long Beach Police Department, Report No. 17-18115
Pavilions Pharmacy #2216 Anaheim Hills, CA (PHY52186)	Phentermine 30 mg capsules, #4 Phentermine 37.5 mg tablets, #40 Phentermine 37.5 mg capsules, #15	Anaheim Police Department, Report No. 17-46325
Vons Pharmacy #2832 La Verne, CA (PHY52114)	Phentermine 37.5 mg tablets, #43 Phentermine 37.5 mg capsules, #48	La Verne Police Department, Report No. 17-0301908

20. As part of its investigation, Albertsons staff interviewed Respondent. During the interview, Respondent admitted to stealing phentermine from Pavilions Pharmacy #2203, Pavilions Pharmacy #2216, and Vons Pharmacy #2832. Respondent stated she diverted the medications for personal use to lose weight. Albertsons staff provided the Board with a signed statement from Respondent. The statement stated that Respondent “made a very bad decision by taking phentermine 37.5 mg, possibly other dosages[,] capsules[,] and tablets.” Respondent admitted that she took the medications because she wanted to lose weight. Respondent stole the medications by opening the bottles, and then dumping the medications into her hands and her pocket. Respondent admitted to stealing the following medications:

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PHARMACY	CONTROLLED SUBSTANCES LOST/STOLEN (AND COUNT)
Pavilions Pharmacy #2203 Long Beach, CA (PHY52179)	Phentermine 37.5 mg capsules and tablets, #50
Pavilions Pharmacy #2216 Anaheim Hills, CA (PHY52186)	Phentermine 37.5 mg capsules, #40
Vons Pharmacy #2832 La Verne, CA (PHY52114)	Phentermine 37.5 mg capsules and tablets, #50-60

21. Albertsons subsequently filed reports with law enforcement regarding Respondent's conduct. As a result of its investigation and findings, Albertsons terminated Respondent on March 23, 2017.

22. On or about April 24, 2017, a Board investigator interviewed Respondent regarding the incidents leading to her termination from Albertsons. Respondent stated that she had "self-esteem issues" and "everyone" was telling her she needed to lose weight because she was "fat." Respondent heard about phentermine, but she could not afford it without insurance. Respondent admitted that she stole phentermine when she was working at Albertson's pharmacies.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

23. Respondent is subject to disciplinary action under sections 490, 4300, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that on or about January 30, 2019, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

- a. On or about January 30, 2019, after pleading guilty, Respondent was convicted of one

1 misdemeanor count of violating Penal Code section 484, subdivision (a)/ 488 [Theft- willfully
2 and unlawfully taking the property of another intending to permanently deprive the owner of said
3 property] in the criminal proceeding entitled *The People of the State of California v. Maram A-
4 Badawi* (Super. Ct. Orange County, 2018, No. 18NM01784MA). The Court placed Respondent
5 on three (3) year probation with terms & conditions. Respondent was further ordered to serve ten
6 (10) days in Orange County jail, pay restitution to the victim and stay away from Pavillion
7 Pharmacy.

8 b. The circumstances underlying the conviction are that on or about February 5, 2017, in
9 the City of Anaheim, Respondent, while employed as a pharmacy technician for Pavillion
10 Pharmacy, she willfully and unlawfully took Phentermine, a Schedule IV narcotic, belonging to
11 Pavillion Pharmacy, by a person to whom it has been entrusted, and the value did not exceed
12 \$950.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or 15 Corruption)**

16 24. Respondent's Pharmacy Technician License is subject to disciplinary action pursuant
17 to section 4301, subdivision (f), in that Respondent committed an act involving moral turpitude,
18 dishonesty, fraud, deceit, or corruption when she diverted phentermine capsules and tablets from
19 three different pharmacies owned and operated by Albertsons. Respondent admitted to this
20 misconduct. Complainant re-alleges paragraphs 18-22, above, as if fully set forth herein.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Administering Controlled Substance to Self)**

23 25. Respondent's Pharmacy Technician License is subject to disciplinary action pursuant
24 to section 4301, subdivision (h), in that between December 30, 2016, and March 23, 2017,
25 Respondent administered phentermine to herself without a prescription. Complainant realleges
26 paragraphs 18-22, above, as if fully set forth herein.

27 **FOURTH CAUSE FOR DISCIPLINE**

28 **(Unprofessional Conduct – Violating California Statutes Applicable to Pharmacy)**

26. Respondent's Pharmacy Technician License is subject to disciplinary action pursuant to section 4301, subdivision (j), in that Respondent exhibited unprofessional conduct by failing to comply with the provisions of the following California statutes:

(a) Section 4059 of the Code: Between December 30, 2016, and March 23, 2017, Respondent stole the phentermine products outlined in Table 2, above, from Albertsons and administered phentermine to herself without a prescription.

(b) Section 4060 of the Code: Between December 30, 2016, and March 23, 2017, Respondent stole the phentermine products outlined in Table 2, above, from Albertsons and administered phentermine to herself without a prescription.

(c) Health and Safety Code, section 11170: Between December 30, 2016, and March 23, 2017, Respondent stole the phentermine products outlined in Table 2, above, from Albertsons and administered phentermine to herself without a prescription.

27. Complainant re-alleges paragraphs 18-22, above, as if fully set forth herein.

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 152709, issued to Maram B. Al-Badawi;

2. Ordering Maram B. Al-Badawi 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; and,

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

DATED: July 16, 2019

Anne Sodergran

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

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6278
6 Facsimile: (213) 897-2804
Facsimile: (213) 897-2804
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

Case No. 6289

14 **MARAM B. AL-BADAWI**
15 **15239 La Subdia Drive**
Hacienda Heights, CA 91745

A C C U S A T I O N

16 **Pharmacy Technician Registration No. TCH**
17 **152709**

18 Respondent.

19 **PARTIES**

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

23 2. On or about January 25, 2016, the Board issued Pharmacy Technician Registration
24 Number TCH 152709 to Respondent Maram B. Al-Badawi (“Respondent”). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and expired on February 28, 2019, and has not been renewed.

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2 **JURISDICTION**

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

6 4. Section 4300 provides, in pertinent part, that every license issued by the Board is
7 subject to discipline, including suspension or revocation.

8 5. Section 4300.1 of the Code states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 4022 of the Code states, in pertinent part:

16 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
17 humans or animals"

18 7. Section 4059 of the Code states:

19 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
20 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
21 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
22 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
23 3640.7.

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

25 "No person shall possess any controlled substance, except that furnished to a person upon
26 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
27 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
28 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer. . . .”

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

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

12 “. . . .

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

16 “. . . .

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

22 “. . . .

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

25 10. Section 11170 of the Health & Safety Code states:

26 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

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1 **COST RECOVERY**

2 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **CONTROLLED SUBSTANCES**

7 12. Adipex-P, generic name phentermine, is a Schedule IV controlled substance as
8 defined in Health and Safety Code section 11057, subdivision (f)(4), and is categorized as a
9 dangerous drug pursuant to section 4022 of the Code.

10 **FACTS**

11 13. Respondent was hired as a pharmacy technician by Albertsons¹ on or about December
12 30, 2016. Respondent was a float pharmacy technician, and she worked at Pavilions Pharmacy
13 #2203, Pavilions Pharmacy #2216, and Vons Pharmacy #2832. On or about February 5, 2017,
14 the pharmacist-in-charge at Pavilions Pharmacy #2216 reported to her District Pharmacy
15 Manager the loss of phentermine products. Respondent was suspected with pilfering the missing
16 medications, since Respondent was new to the location and had reported to the pharmacist-in-
17 charge that Respondent wanted to lose weight. Respondent told the pharmacist-in-charge that she
18 had tried phentermine from her sister's prescription and asked about side effects.

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28 ¹ Albertsons owns and operates some pharmacies in grocery stores bearing the name "Vons" or
"Pavilions."

14. On or about March 29, 2017, Albertsons Pharmacy Compliance and Analytics Team reported to the Board a loss of phentermine products from three different pharmacies due to employee pilferage. Albertsons provided three DEA Form 106s, one for each loss, with the following information:

PHARMACY	CONTROLLED SUBSTANCES LOST/STOLEN (AND COUNT)	POLICE REPORT NUMBER
Pavilions Pharmacy #2203 Long Beach, CA (PHY52179)	Phentermine 37.5 mg tablets, #37 Phentermine 37.5 mg capsules, #16	Long Beach Police Department, Report No. 17-18115
Pavilions Pharmacy #2216 Anaheim Hills, CA (PHY52186)	Phentermine 30 mg capsules, #4 Phentermine 37.5 mg tablets, #40 Phentermine 37.5 mg capsules, #15	Anaheim Police Department, Report No. 17-46325
Vons Pharmacy #2832 La Verne, CA (PHY52114)	Phentermine 37.5 mg tablets, #43 Phentermine 37.5 mg capsules, #48	La Verne Police Department, Report No. 17-0301908

15. As part of its investigation, Albertsons staff interviewed Respondent. During the interview, Respondent admitted to stealing phentermine from Pavilions Pharmacy #2203, Pavilions Pharmacy #2216, and Vons Pharmacy #2832. Respondent stated she diverted the medications for personal use to lose weight. Albertsons staff provided the Board with a signed statement from Respondent. The statement stated that Respondent “made a very bad decision by taking phentermine 37.5 mg, possibly other dosages[,] capsules[,] and tablets.” Respondent admitted that she took the medications because she wanted to lose weight. Respondent stole the medications by opening the bottles, and then dumping the medications into her hands and her pocket. Respondent admitted to stealing the following medications:

PHARMACY	CONTROLLED SUBSTANCES LOST/STOLEN (AND COUNT)
Pavilions Pharmacy #2203 Long Beach, CA (PHY52179)	Phentermine 37.5 mg capsules and tablets, #50
Pavilions Pharmacy #2216 Anaheim Hills, CA (PHY52186)	Phentermine 37.5 mg capsules, #40
Vons Pharmacy #2832 La Verne, CA (PHY52114)	Phentermine 37.5 mg capsules and tablets, #50-60

16. Albertsons subsequently filed reports with law enforcement regarding Respondent's conduct. As a result of its investigation and findings, Albertsons terminated Respondent on March 23, 2017.

17. On or about April 24, 2017, a Board investigator interviewed Respondent regarding the incidents leading to her termination from Albertsons. Respondent stated that she had "self-esteem issues" and "everyone" was telling her she needed to lose weight because she was "fat." Respondent heard about phentermine, but she could not afford it without insurance. Respondent admitted that she stole phentermine when she was working at Albertson's pharmacies.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

18. Respondent's Pharmacy Technician License is subject to disciplinary action pursuant to section 4301, subdivision (f), in that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption when she diverted phentermine capsules and tablets from three different pharmacies owned and operated by Albertsons. Respondent admitted to this misconduct.

Complainant realleges paragraphs 13-17, above, as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Administering Controlled Substance to Self)

19. Respondent's Pharmacy Technician License is subject to disciplinary action pursuant to section 4301, subdivision (h), in that between December 30, 2016, and March 23, 2017, Respondent administered phentermine to herself without a prescription.

Complainant realleges paragraphs 13-17, above, as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violating California Statutes Applicable to Pharmacy)

20. Respondent's Pharmacy Technician License is subject to disciplinary action pursuant to section 4301, subdivision (j), in that Respondent exhibited unprofessional conduct by failing to comply with the provisions of the following California statutes:

(a) Section 4059 of the Code: Between December 30, 2016, and March 23, 2017, Respondent stole the phentermine products outlined in Table 2, above, from Albertsons and administered phentermine to herself without a prescription.

(b) Section 4060 of the Code: Between December 30, 2016, and March 23, 2017, Respondent stole the phentermine products outlined in Table 2, above, from Albertsons and administered phentermine to herself without a prescription.

(c) Health and Safety Code, section 11170: Between December 30, 2016, and March 23, 2017, Respondent stole the phentermine products outlined in Table 2, above, from Albertsons and administered phentermine to herself without a prescription.

Complainant realleges paragraphs 13-17, above, as if fully set forth herein.

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 152709, issued to Maram B. Al-Badawi;

1 2. Ordering Maram B. Al-Badawi to pay the Board of Pharmacy the reasonable costs of
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3; and,

4 3. Taking such other and further action as deemed necessary and proper.
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7 DATED: April 30, 2019



8 ANNE SODERGREN
9 Interim Executive Officer
10 Board of Pharmacy
11 Department of Consumer Affairs
12 State of California
13 Complainant

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