

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

In the Matter of the Accusation Against:

ASHLEY NICOLE WORMUTH, Respondent

Pharmacy Technician Registration No. TCH 160489

Agency Case No. 6534

OAH No. 2020050163

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on November 25, 2020.

It is so ORDERED on October 26, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name.

By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
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8

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

12 In the Matter of the Accusation Against:

13 **ASHLEY NICOLE WORMUTH**
14 **2974 Faircliff Ct.**
San Jose, CA 95125

15 **Pharmacy Technician Registration No. TCH**
16 **160489**

17 Respondent.

Case No. 6534

OAH No. 2020050163

STIPULATED SURRENDER OF
REGISTRATION AND ORDER

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Xavier Becerra, Attorney General of the State of California, by Timothy J. McDonough, Deputy
25 Attorney General.

26 2. Ashley Nicole Wormuth (Respondent) is representing herself in this proceeding and
27 has chosen not to exercise her right to be represented by counsel.
28

3. On or about April 24, 2017, the Board issued Pharmacy Technician Registration No. TCH 160489 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on April 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 6534 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 10, 2020. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 6534 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 6534. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of Registration and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 6534, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician Registration No. TCH 160489 for the Board's formal acceptance.

///

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician Registration without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender of Registration and Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of Registration and Order, including PDF and facsimile signatures, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of Registration and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered registration by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

3. Respondent shall cause to be delivered to the Board her pocket registration and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$2,630.00 prior to issuance of a new or reinstated registration.

ACCEPTANCE

4

1 Stipulated Surrender of Registration and Order voluntarily, knowingly, and intelligently, and
2 agree to be bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: _____

ASHLEY NICOLE WORMUTH
Respondent

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8 **ENDORSEMENT**

9 The foregoing Stipulated Surrender of Registration and Order is hereby respectfully
10 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

11
12 DATED: _____

Respectfully submitted,

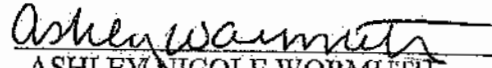
13 XAVIER BECERRA
14 Attorney General of California
15 DIANN SOKOLOFF
Supervising Deputy Attorney General

16
17 TIMOTHY J. McDONOUGH
18 Deputy Attorney General
Attorneys for Complainant

19
20 OK2019300488
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1 Stipulated Surrender of Registration and Order voluntarily, knowingly, and intelligently, and
2 agree to be bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: 07/09/2020


5 ASHLEY NICOLE WORMUTH
6 Respondent


7
8 **ENDORSEMENT**

9 The foregoing Stipulated Surrender of Registration and Order is hereby respectfully
10 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

11
12 DATED: 07.10.2020

Respectfully submitted,

13 XAVIER BECERRA
14 Attorney General of California
15 DIANN SOKOLOFF
16 Supervising Deputy Attorney General


17 TIMOTHY J. McDONOUGH
18 Deputy Attorney General
19 Attorneys for Complainant

20 OK2019300488
21 91261513.docx

Exhibit A

Accusation No. 6534

1 XAVIER BECERRA
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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
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Deputy Attorney General
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Attorneys for Complainant
8

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

13 In the Matter of the Accusation Against:

Case No. 6534

14 **ASHLEY NICOLE WORMUTH**
15 **2974 Faircliff Ct.**
16 **San Jose, CA 95125**

ACCUSATION

17 **Pharmacy Technician Registration No. TCH**
18 **160489**

Respondent.

19
20 **PARTIES**

21 1. Anne Sodergren (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 April 24, 2017, the Board of Pharmacy issued Pharmacy Technician
24 Registration No. TCH 160489 to Ashley Nicole Wormuth (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought in
26 this Accusation and will expire on April 30, 2021, unless renewed.

27 ///

28 ///

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 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300 of the Code states, in relevant part:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

6. 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

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTES

4 7. Section 4301 of the Code states:

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

14 . . .

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

17 . . .

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

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

7 8. Section 4060 of the Code states:

8 "No person shall possess any controlled substance, except that furnished to a person upon
9 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
10 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
11 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
12 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
13 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
14 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
15 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
16 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
17 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
18 labeled with the name and address of the supplier or producer.

19 "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician
20 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

21 9. Section 4022 of the Code states

22 "Dangerous drug or dangerous device means any drug or device unsafe for self-use in
23 humans or animals, and includes the following:

24 "(a) Any drug that bears the legend: Caution: federal law prohibits dispensing without
25 prescription, Rx only, or words of similar import.

26 "(b) Any device that bears the statement: Caution: federal law restricts this device to sale by
27 or on the order of a _____, Rx only, or words of similar import, the blank to be filled in
28 with the designation of the practitioner licensed to use or order use of the device.

1 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
2 prescription or furnished pursuant to Section 4006.”

3 **REGULATORY PROVISIONS**

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

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

11 **DRUGS**

12 11. Code section 4021 states:

13 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
14 11053) of Division 10 of the Health and Safety Code.”

15 12. Cocaine is a Schedule II controlled substance as designated by Health and Safety
16 Code section 11055, subdivision (b)(6), and a dangerous drug as designated by Business and
17 Professions Code section 4022.

18 **COST RECOVERY**

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

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BACKGROUND

Driving Under the Influence of Alcohol Arrest and Conviction

14. On or about March 24, 2018, a California Highway Patrol Officer (officer) responded to a report of a vehicle collision on Annapolis Way in San Jose, California. The responding officer observed a Mazda sport utility vehicle (SUV) which had been in a collision with a Ford truck. Based on his observations of the damage and positions of the vehicles, the officer believed that the Mazda SUV struck the Ford truck while it was parked on the south curb of Annapolis Way. The officer made contact with Respondent and identified her as the driver of the Mazda SUV. During his interaction with Respondent, the officer observed that her eyes were blood shot and watery and she had a strong odor of an alcoholic beverage on her breath. Subsequently, Respondent performed poorly on several field sobriety test. A preliminary alcohol screening test revealed Respondent had a blood alcohol concentration of .173%.

15. On or about November 19, 2018, in Santa Clara Superior Court, Case No. C1891487, Respondent was convicted, based on her plea of nolo contendere, of driving with a blood alcohol concentration over .08% (Veh. Code, § 23512, subd. (b)), a misdemeanor. Also, Respondent admitted to an enhancement charge of driving with a blood alcohol concentration of .15% or higher (Veh. Code, § 23578). The court sentenced Respondent to 15 days in jail and placed her on formal probation for three years with various terms and conditions. These conditions included, but were not limited to: attend and complete a three-month First Offender Drunk Driving Program; not drive without a valid license and insurance; and pay various fines and fees.

Arrest and Conviction for Possession of Cocaine with Intent to Sell

16. On or about June 11, 2018, Respondent was arrested in San Jose for possessing cocaine for sale. Specifically, Respondent and a group of people were loitering and drinking beer in a parking lot in San Jose. Respondent was sitting in her car, which contained three open containers of alcohol. A subsequent search of Respondent's car revealed cocaine, a scale, and cash. The cocaine was located in Respondent's purse, packaged in 10 small plastic ziploc bags,¹

¹ A field narcotic identification test on the substance in the ziploc bags was presumptive positive for cocaine.

1 and a digital scale was located in the glove compartment. Respondent's purse contained 134
2 dollars. Respondent was arrested for possessing a controlled substances for sale (Health and
3 Safety Code, § 11351).

4 17. On or about May 21, 2019, in a criminal proceeding entitled *The People of the State*
5 *of California v. Ashley Nicole Wormuth*, in the Santa Clara County Superior Court, Case No.
6 C1897485, Respondent was convicted, based on her plea of nolo contendere, of one count of
7 possessing a controlled substance, to wit cocaine, for sale (Health & Safety Code, § 11351), a
8 felony. The court sentenced Respondent to serve 4 months in county jail and placed her on
9 formal probation for three years with various terms and conditions. These conditions included,
10 but were not limited to: submit to searches by law enforcement; submit to testing for drugs; and
11 attend substance abuse programs as directed by the probation department.²

12 **FIRST CAUSE FOR DISCIPLINE**
13 (Dangerous Use of Alcohol)

14 18. Respondent has subjected her Pharmacy Technician Registration to disciplinary
15 action under Code section 4301, subdivision (h), in that on or about March 24, 2018, she used,
16 and was under the influence of, alcoholic beverages to an extent dangerous or injurious to herself
17 and the public. Respondent was arrested for driving under the influence of alcohol after her car
18 crashed into another vehicle. The circumstances are explained in paragraph 14, above.

19 **SECOND CAUSE FOR DISCIPLINE**
20 (Unprofessional Conduct-Conviction of a Crime)

21 19. Respondent has subjected her Pharmacy Technician Registration to disciplinary
22 action under Code section 4301, subdivision (l), in that on or about November 19, 2018, she was
23 convicted of a crime substantially related to the qualifications, functions, and duties of a
24 pharmacy technician. Specifically, Respondent was convicted of driving with a blood alcohol
25 concentration over .08% (Veh. Code, § 23512, subd. (b)), a misdemeanor The conviction and the
26 facts underlying the conviction are explained in paragraphs 14 and 15, above.

27 ///

28 ² The court ordered that Respondent be eligible for all relevant programs.

THIRD CAUSE FOR DISCIPLINE
(Illegal Possession of Controlled Substance)

20. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4060, in that on or about June 11, 2018, she was illegally in possession of cocaine, a controlled substance. The circumstances are explained more fully in paragraph 16, above.

FOURTH CAUSE FOR DISCIPLINE
(Violation of Laws Relating to Controlled Substances)

21. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (j), in that she violated state laws relating to controlled substances, including Health and Safety Code, section 11351 (possessing a controlled substance for sale), when she was found in possession of cocaine, which she intended to sell, on or about June 11, 2018. The circumstances are explained in paragraph 16, above.

FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct--Conviction of a Crime)

22. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (l), in that on or about May 21, 2019, she was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. Specifically, Respondent was convicted of one felony count of possessing a controlled substance (cocaine) for sale (Health & Safety Code, § 11351). The conviction and its underlying facts are explained in paragraphs 16 and 17, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 160489, issued to Ashley Nicole Wormuth;
2. Ordering Ashley Nicole Wormuth 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: February 4, 2020



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

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