

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

In the Matter of the Accusation Against:

MARLENE K. RANGEL

**Pharmacy Technician Registration No. TCH
85799**

Respondent.

Case No. 6591

OAH No. 2019040323

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 January 23, 2020.

It is so ORDERED on December 24, 2019.

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 Accusation Against:

MARLENE K. RANGEL, Respondent

Case No. 6591

OAH No. 2019040323

PROPOSED DECISION

Russel T. Little, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 27, 2019, in San Diego, California.

Kristen T. Dalessio, Deputy Attorney General, State of California represented complainant Anne Sodergren, Interim Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (board).

Marlene K. Rangel, respondent, did not appear at the hearing. Based on proof of compliance with Government Code sections 11503 and 11509, this matter proceeded as a default against respondent pursuant to Government Code section 11520.

The record was held open to afford complainant time to file a supplemental brief regarding the applicable standard of proof. On September 3, 2019, complainant timely submitted her supplemental brief. The record was closed and the matter was submitted for decision on September 3, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 29, 2008, the board issued pharmacy technician registration number TCH 85799 to respondent. Respondent's pharmacy technician registration is current and renewed through June 30, 2020.

A citation was issued against respondent in 2016. In a prior action, the board issued citation number CI201672163 and ordered respondent to pay a fine of \$1,000 arising out of an incident in September 2016, when respondent drove under the influence of alcohol and marijuana.

2. On December 3, 2018, Virginia Herold, in her official capacity as Executive Officer of the board, signed an accusation. On December 5, 2018, the accusation and other required jurisdictional documents were served upon respondent.

3. On January 31, 2019, respondent filed a notice of defense.

4. On July 19, 2019, complainant signed the first amended accusation seeking the revocation or suspension of respondent's license. On July 19, 2019, the first amended accusation and a supplemental statement were served on respondent.

The first amended accusation contained three causes for discipline pursuant to Business and Professions Code section 4301, subdivision (a), alleging unprofessional conduct for dishonesty, fraud, deceit or corruption based on unlawfully furnishing controlled substances; subdivision (g), alleging unprofessional conduct for knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts; and, subdivision (j) alleging unprofessional conduct for violation of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs, including Business & Professions Code sections 4059, 4050 and 4324; Health and Safety Code sections 11171 and 11173, subdivision (a).

The supplemental statement to respondent advised that the previously filed notice of defense would serve as a response to the first amended accusation.

5. On April 9, 2019, a notice of hearing was served upon respondent at the address listed on her notice of defense. The notice of hearing advised respondent that the hearing would commence on August 27, 2019, at 9:00 a.m. at the Office of Administrative Hearings located at 1350 Front Street, Suite 3005, San Diego, CA 92101. The notice of hearing was on letterhead from the Attorney General's office and provided contact telephone and facsimile numbers. The notice of hearing further provided respondent with the contact telephone number of the Office of Administrative Hearings.

Respondent's Default

6. On August 27, 2019, at 9:00 a.m. the matter was called for hearing. Respondent was not present in the courtroom. The matter was called again at 9:30

a.m. Respondent was not present. Neither the Attorney General's office nor the Office of Administrative Hearings had received any communication from respondent.

7. As demonstrated by the proofs of service, respondent was properly served with the accusation, first amended accusation and the notice of hearing. No good cause exists for her failure to appear at the noticed hearing. Complainant's request to proceed with a default prove-up hearing was granted.

Investigation

TESTIMONY OF KATHERINE SILL

8. Katherine Sill testified at the hearing. A summary of her testimony follows.

Ms. Sill is an inspector for the board. She has been a licensed pharmacist for 31 years. Ms. Sill's current assignment is with probation monitoring.

On June 4, 2018, the board received a copy of a Drug Enforcement Administration (DEA) form 106¹ from Avalon Pharmacy (Avalon). On May 24, 2018, Avalon reported a loss of Methadone 10mg #212 tablets and APAP/Codeine 300/30 #60 (Tylenol #3) tablets to the DEA. Respondent was identified as the pharmacy technician who filled out and used a prescription refill request for Tylenol #3.

¹ Form 106 is a Report of Theft or Loss of Controlled Substances. The form is to be filed with the DEA by registrants (for example a pharmacy) to report a theft or loss of controlled substances.

Ms. Sill requested a CURES² report on respondent. There was “no data” for respondent. A second CURES query on respondent’s father William Rangel turned up nine narcotic prescriptions prescribed by four different doctors among four pharmacies during the first six months of 2018. These included the two prescriptions reported to the DEA by Avalon. The CURES report indicated that the questionable refill of a prescription for Tylenol #3 had been called in by the medical office of Dr. Deepak N. Pate, M.D.

In July 2018, Ms. Sill telephoned and spoke with Dr. Patel. She inquired about three different prescriptions for William Rangel that had been telephoned to two separate pharmacies in April and May 2018. Dr. Patel had authorized two of the prescriptions. The third telephone prescription, dated April 25, 2018, to Avalon for Tylenol #3 refill was not authorized by Dr. Patel or anyone on his behalf. It was Dr. Patel who had first noticed the unauthorized Tylenol #3 refill prescription and notified the pharmacist at Avalon. The declaration of Dr. Patel presented at the hearing confirmed Ms. Sill’s testimony.³

² Controlled Substance Utilization Review & Evaluation System is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement.

³ Complainant provided notice pursuant to Government Code, section 11514 that Declaration of Deepak N. Patel, M.D. would be submitted as evidence at the hearing and that Dr. Patel would not testify at the hearing. Respondent did not object. Under 11514, the declaration was used as direct evidence and “given the same effect as if the affiant had testified orally.” It was marked and entered as Exhibit 4.

On July 18, 2018, Ms. Sill contacted Pharmacist-In-Charge (PIC) for Avalon, Sara Armaghan. Ms. Armaghan confirmed respondent's hire date in February 2018. She also advised Ms. Sill that Avalon had been sold to CVS and all records had been transferred to CVS. Ms. Sill obtained a copy of Avalon's prescription information for Tylenol #3 as filed by respondent on April 25, 2018. The information included a copy of the "back tag," which included respondent's initials. Ms. Armaghan confirmed that respondent wrote, typed, processed, filled and took the Tylenol #3 prescription, and that she received a call from Dr. Patel stating that he never authorized the refill prescription for Tylenol #3 under his name.

Ms. Sill concluded that respondent transcribed and processed a fraudulent prescription on April 25, 2018, for Tylenol #3 that had been falsely authorized by "Cynthia" at Dr. Patel's office.

On August 2, 2018, Ms. Sill interviewed respondent outside OC Wellness and Specialty Pharmacy where respondent was employed as a pharmacy technician. During the conversation, respondent acknowledged she had been employed at Avalon from February 2018 to April 2018. However, respondent denied responsibility for the Tylenol #3 refill prescription when she was shown the Avalon computer printout, which showed her name used to process the prescription. Respondent gave no further explanation and became "evasive."

TESTIMONY OF SARA ARMAGHAN

9. Sara Armaghan testified at the hearing. A summary of her testimony follows.

Ms. Armaghan has been a licensed pharmacist for 19 years. She was the PIC at Avalon from 2005 until she sold it to CVS in July 2018. She ran the daily operation of Avalon including the supervision of staff pharmacists, pharmacy technicians and clerks.

Ms. Armaghan described a pharmacy technician as an individual who assists the pharmacist, receives telephone calls, types up and processes prescriptions. At Avalon, the technicians had access to controlled substances "on the shelves."

She hired respondent in February 2018. Ms. Armaghan supervised respondent "all the time" processing prescriptions and refills. She identified respondent's handwriting and initials on the refill prescription for Tylenol #3 dated April 25, 2018.

Ms. Armaghan confirmed that she spoke with Ms. Sill during the investigation and she provided a letter to Ms. Sill summarizing their conversation. In her letter and during her testimony, Ms. Armaghan concluded that respondent "typed, processed and filled" the fraudulent refill prescription for Tylenol #3 on April 25, 2018. Ms. Armaghan testified about a "screen shot" of a text message she received from respondent in which respondent explained that the "methadone was a user's error and the Tylenol 3 was for my dad."

Investigation and Prosecution Costs

10. Complainant requested cost recovery under Business and Professions Code section 125.3. A certification by the Investigator Katherine Sill contained information related to services she provided and included costs of investigation in the amount of \$5,838.25. A certification by the Deputy Attorney General contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of \$14,042.50. The certifications complied

with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

LEGAL CONCLUSIONS

1. The main purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

The Burden and Standard of Proof

2. Complainant bears the burden of proof to establish that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 583.)

3. In determining the proper standard of proof to apply in administrative license revocation proceedings, courts have drawn a distinction between professional licenses such as those held by doctors, lawyers, and real estate brokers, on the one hand, and nonprofessional or occupational licenses such as those held by food processors and vehicle salespersons, on the other hand. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard of proof applies. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.)

An applicant for a professional license must ordinarily satisfy extensive educational and training requirements and then pass a rigorous state administered competency examination. A nonprofessional license typically is issued without the need to demonstrate any specific education or skill and upon the mere showing of good character. This difference between professional and nonprofessional licenses supports a distinction in the standards of proof needed for license revocation. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319.)

Business and Professions Code section 4038 defines a "pharmacy technician" as "an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties as specified in section 4115." Business and Professions Code section 4115 sets forth various tasks a pharmacy technician may perform. For example, subdivision (a) provides "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." A pharmacy technician license may be issued upon showing a minimal level of formal education, training, and experience. (Bus. & Prof. Code, §4202, subd. (a).) Pharmacy technician registration is a nonprofessional or occupational license. Therefore, the preponderance of the evidence standard applies in this proceeding.

"Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.] . . . The sole focus of the legal definition of "preponderance" in the phrase "preponderance of the evidence" is on the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314,324-325.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue

preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Applicable Disciplinary Statutes and Regulations

4. Business and Professions Code section 4300 provides in 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"

5. 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:

[§] . . . [§]

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

[§] . . . [§]

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

[¶] . . . [¶]

(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.

6. Business and Professions Code section 4059, subdivision (a), provides:

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

7. Business and Professions Code section 4060 provides:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician

assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1 , 4052.2 , or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

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

8. Business and Professions Code section 4324, subdivision (a), provides:

(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not more than one year.

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

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

10. Health and Safety Code section 11171 provides:

No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

11. Health and Safety Code section 11173, subdivision (a), provides:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

Evaluation

12. Cause exists under Business and Professions Code sections 4301, subdivision (f), because respondent engaged in dishonest, fraudulent and deceitful

conduct as described above, which conduct constitutes highly unprofessional conduct of a pharmacy technician. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness and the exercise of impeccable judgment, particularly when a technician has access to confidential personal and financial information of consumers, and to controlled substances. The absence of these essential characteristics can result in a significant threat to the public health, safety and welfare. The evidence provided showed respondent wrote, typed and processed a false refill prescription of a controlled substance, Tylenol #3, for her father.

13. Cause exists under Business and Professions Code sections 4301, subdivision (g), because respondent knowingly made and signed a document that falsely represents the existence of facts when she created and signed a prescription with the name of another and wrote, typed and processed the false prescription for a controlled substance, Tylenol #3.

14. Cause exists under Business and Professions Code section 4301, subdivision (j). Subdivision (j) authorizes disciplinary action against respondent if she is found to have violated "any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs." Respondent has violated the subdivisions of the Business and Professions Code listed above and therefore, provides a basis for discipline.

Discipline Determination

15. The first amended accusation filed against respondent contains a section entitled "Discipline Considerations." In that section it is asserted that in determining the degree of discipline imposed, if any, consideration should be given to a citation number CI201672163 against respondent. This citation is additional evidence of

respondent's unprofessional conduct and has been considered in assessing the degree of discipline to impose in this case.

16. The determination as to whether respondent's license should be revoked or suspended includes evaluation of the rehabilitation criteria set forth in California Code of Regulations, title 16, section 1769. Additionally, the board's Disciplinary Guidelines (revised 10/2007) have been considered in reaching the determination of the appropriate level of discipline.

17. Respondent's act of fraudulently writing and processing a refill prescription for a family member demonstrates that she is unqualified to hold a pharmacy technician license. Issuing a false prescription of a controlled substance clearly shows that respondent engaged in an act that was dishonest, immoral and disreputable and that the public would be at great risk of harm should respondent retain her license and obtain a position as a pharmacy technician.

18. Respondent failed to appear at the hearing she requested. No evidence of mitigation or rehabilitation was presented and none appears in the documents admitted as exhibits.

19. Upon consideration of the entirety of the facts and the application of the disciplinary criteria, it is concluded that the protection of the public can only be achieved if respondent's license is revoked. Granting respondent a probationary license, with or without a period of suspension, would not adequately protect the public.

Recovery of Costs of Investigation and Prosecution

20. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

21. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court dealt with the issue of cost recovery, and noted that

because a licensee with limited financial resources might forego a hearing for fear that a board might erroneously sustain the charges and order the licensee to reimburse costs, discretion must be used to ensure that a licensee with a meritorious claim is not deterred from exercising his or her right to a hearing. (*Id.* at p. 44.) The Court determined that five factors should be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and Professions Code section 125.3: Whether the licensee has been successful at hearing in having charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

22. Here, respondent engaged in the conduct that is the primary focus of the first amended accusation. Respondent requested a hearing but did not appear. She did not present any evidence of a subjective good faith belief in the merits of her position or raise a colorable challenge to the discipline in pursuing a hearing.

The investigative costs requested total \$5,838.25, which is calculated at an hourly rate of \$121 for 48.25 hours of work completed by Ms. Sill. The total of 48.25 hours included 24 hours to draft and edit the investigation report, which is grossly excessive for the nature and extent of this investigation. The drafting and editing time for a report of this nature should be no more than six hours. The investigative costs are reduced accordingly to \$3,660.25, which is calculated at an hourly rate of \$121 for 30.25 hours.

The prosecution costs requested total \$14,042.50, which is calculated at an hourly rate of \$170 for 73.25 hours for one attorney. These costs are

disproportionately large compared to the investigative costs. Preparation for this case should have been straightforward. The prosecution costs are reduced to \$3,400, which is calculated at an hourly rate of \$170 for 20 hours. Finally, respondent will lose her license and her prospects for employment may not be good.

Reasonable investigative and prosecution costs total \$7,060.25.

ORDER

1. It is hereby ordered that respondent's Pharmacy Technician License Number TCH 85799 is revoked.

2. Respondent shall relinquish her technician license to the board within ten (10) days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of her revoked technician license for three (3) years from the effective date of this decision.

3. A condition of reinstatement shall be that respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4) and provides satisfactory proof of certification to the board.

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4. As a condition precedent to reinstatement of her revoked technician's license respondent shall reimburse the board the sum of \$7,060.25 as reasonable costs of investigation and prosecution. Said amount shall be paid in full prior to the reapplication or reinstatement of respondent's revoked technician license, unless otherwise ordered by the board.

DATE: October 1, 2019

DocuSigned by:

Russel T. Little

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RUSSEL T. LITTLE

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KRISTEN T. DALESSIO
Deputy Attorney General
4 State Bar No. 149081
600 West Broadway, Suite 1800
5 San Diego, CA 92101
Telephone: (619) 738-9551
6 Facsimile: (619) 645-2061
E-mail: Kristen.Dalessio@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **MARLENE K. RANGEL**
14 **15123 Brookhurst St., #269**
Westminster, CA 92683

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16 **Pharmacy Technician Registration No. TCH**
85799

17 Respondent.
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Case No. 6591

OAH No. 2019040323

FIRST AMENDED ACCUSATION

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, Department of
22 Consumer Affairs.

23 2. On or about August 29, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 85799 to Marlene K. Rangel (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on June 30, 2020, unless renewed.
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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

16 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
17 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
18 disciplinary action during the period within which the license may be renewed, restored, reissued
19 or reinstated.

20 **STATUTORY PROVISIONS**

21 6. Section 4301 of the Code states:

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

25 . . .

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

1 (g) Knowingly making or signing any certificate or other document that falsely represents
2 the existence or nonexistence of a state of facts.

3 . . .

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

6 7. Section 4059 of the Code states:

7 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
8 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
9 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
10 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
11 3640.7.”

12 8. Section 4060 of the Code states:

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

24 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
25 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
26 devices.”

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct---Fraudulent Furnishing of Controlled Substances)**

3 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
4 for unprofessional conduct, for dishonesty, fraud, deceit or corruption when she unlawfully
5 furnished controlled substances, as set forth in paragraph 14 above, which is hereby incorporated
6 by reference.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct---Falsely Representing Facts)**

9 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (g),
10 for unprofessional conduct, for knowingly making or signing any certificate or other document
11 that falsely represents the existence or nonexistence of a state of facts, as set forth in paragraph 14
12 above, which is hereby incorporated by reference.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct---Violation of Statutes)**

15 17. Respondent is subject to disciplinary action under Code section 4301, subdivision
16 (j), for unprofessional conduct, for violation of the statutes of this State regulating controlled
17 substances and dangerous drugs, in violation of Business and Professions Code sections 4059,
18 4060 and 4324, and Health and Safety Code sections 11171 and 11173, subdivision (a), as set
19 forth in paragraph 14 above, which is hereby incorporated by reference.

20 **DISCIPLINE CONSIDERATIONS**

21 18. To determine the degree of discipline, if any, to be imposed on Respondent,
22 Complainant alleges that on or about December 28, 2016, in a prior action, the Board of
23 Pharmacy issued Citation Number CI201672163 and ordered Respondent to pay a fine of
24 \$1,000.00 arising out of an incident on or about September 2, 2016, when respondent drove under
25 the influence of alcohol and marijuana. That Citation is now final and is incorporated by
26 reference as if fully set forth.

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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 85799, issued to Marlene K. Rangel;
2. Ordering Marlene K. Rangel 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 19, 2019 _____



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

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