

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

**In the Matter of the Accusation Against:**

**VANESSA ELAINE KIRBY, Respondent**

**Pharmacy Technician Registration No. TCH 122881**

**Agency Case No. 6706**

**DECISION AND ORDER**

The attached Stipulated Surrender of License 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 May 27, 2020.

It is so ORDERED on April 27, 2020.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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

By

Greg Lippe  
Board President

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 JOSHUA B. EISENBERG  
Deputy Attorney General  
4 State Bar No. 279323  
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6706

13 **VANESSA ELAINE KIRBY**  
14 **2247 Jonquil Way**  
**Redding, CA 96002**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 **Pharmacy Technician Registration No. TCH**  
16 **122881**

Respondent.

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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 Joshua B. Eisenberg, Deputy  
25 Attorney General.

26 2. Vanessa Elaine Kirby (Respondent) is representing herself in this proceeding and has  
27 chosen not to exercise her right to be represented by counsel.

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3. On or about April 6, 2012, the Board issued Pharmacy Technician Registration No. TCH 122881 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 6706. The Pharmacy Technician Registration expired on August 31, 2019 and was cancelled.

## JURISDICTION

4. Accusation No. 6706 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 December 17, 2020. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 6706 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. 6706. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License 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 understands that the charges and allegations in Accusation No. 6706, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacy Technician Registration.

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9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up her right to contest that cause for discipline exists based on those charges.

10. 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

11. 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 and Disciplinary 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.

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

13. 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 License 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.

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14. 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:

**ORDER**

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 122881, issued to Respondent Vanessa Elaine Kirby, is surrendered and accepted by the Board.

1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license 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.

2. Respondent shall lose all rights and privileges as a pharmacy technician in California as of the effective date of the Board's Decision and Order.

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

4. If she ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 6706 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$7,001.25 prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 6706 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall not apply for licensure or petition for reinstatement for three (3) years from the effective date of the Board's Decision and Order.

1 ACCEPTANCE

2 I have carefully read the Stipulated Surrender of License and Order. I understand the  
3 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this  
4 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to  
5 be bound by the Decision and Order of the Board of Pharmacy.

6  
7 DATED: 3/19/2020

  
8 VANESSA ELAINE KIRBY  
9 Respondent

10 ENDORSEMENT

11 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
12 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

13 DATED: 3/19/2020

14 Respectfully submitted,

15 XAVIER BECERRA  
16 Attorney General of California  
17 KENT D. HARRIS  
18 Supervising Deputy Attorney General

19 JOSHUA B. EISENBERG  
20 Deputy Attorney General  
21 Attorneys for Complainant

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DATED:

## ENDORSEMENT

DATED:

3/20/20

XAVIER BECERRA  
Attorney General of California  
KENT D. HARRIS  
Supervising Deputy Attorney General

JOSHUA B. EISENBERG  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 6706**

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 JOSHUA B. EISENBERG  
Deputy Attorney General  
4 State Bar No. 279323  
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Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6706

13 **VANESSA ELAINE KIRBY**  
14 **2247 Jonquil Way**  
**Redding, CA 96002**

**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
16 **122881**

17 Respondent.

18  
19 **PARTIES**

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

23 2. On or about April 6, 2012, the Board issued Pharmacy Technician Registration  
24 Number TCH 122881 to Vanessa Elaine Kirby (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 August 31, 2019, unless renewed.

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**JURISDICTION**

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

4. Code section 4011 provides, in pertinent part, 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. Code section 4300 states, in pertinent part, that every license issued may be suspended or revoked.

6. Code section 4300.1 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**

7. Code section 4301 states, in pertinent 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.

...

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

...

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

...

1 8. Code section 4021 states:

2 "Controlled Substance' means any substance listed in Chapter 2 (commencing with section  
3 11053) of Division 10 of the Health and Safety Code."

4 9. Code section 4022 states:

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

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

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

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

15 10. Code section 4059 provides, in pertinent part, that no person shall furnish any  
16 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or  
17 veterinarian.

18 11. Health and Safety Code section 11171 states that "no person shall prescribe,  
19 administer, or furnish a controlled substance except under the conditions and in the manner  
20 provided by this division."

21 12. Health and Safety Code section 11173 provides, in pertinent part, that no person shall  
22 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
23 administration of controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or  
24 (2) by the concealment of a material fact.

### 25 **COST RECOVERY**

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

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1 **CONTROLLED SUBSTANCES**

2 14. *Percocet*, also known as oxycodone/acetaminophen, is a Schedule II controlled  
3 substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a  
4 dangerous drug pursuant to Business and Professions Code section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

7 15. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (f),  
8 for unprofessional conduct, in that Respondent committed acts involving moral turpitude,  
9 dishonesty, fraud, deceit or corruption. The circumstances are as follows:

10 a. On or around June 9, 2018, while employed at Rite Aid Pharmacy #6095  
11 (“Rite Aid”) in Redding, CA, Respondent sold prescriptions RX#918800 and RX #927817 to  
12 B.R., a non-licensed employee of Rite Aid, for a total of \$0.58. Only RX#918800 was prescribed  
13 to B.R., whereas RX#927817 had been prescribed to patient R.W. and contained 100  
14 oxycodone/acetaminophen 5/325mg tablets. Because the prescription was for a schedule II  
15 controlled substance, in order to dispense RX#927817 to B.R., Respondent had to enter R.W.’s  
16 date of birth and obtain a pharmacist’s fingerprint, indicating that a consultation had been  
17 provided or had been declined by the patient. As a result of this incident, on or about September  
18 24, 2018, Respondent and B.R. were terminated from Rite Aid for diverting  
19 oxycodone/acetaminophen.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Furnishing of Dangerous Drugs)**

22 16. Respondent is subject to discipline under Code section 4059 and Health and Safety  
23 Code section 11171, in that on June 9, 2018, Respondent furnished to B.R.  
24 oxycodone/acetaminophen, a controlled substance and dangerous drug, without a valid  
25 prescription, as more fully set forth above in paragraph 15.

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**THIRD CAUSE FOR DISCIPLINE**


**(Violations of Statutes Governing Controlled Substances)**

17. Respondent is subject to discipline under Code section 4301, subdivision (j), in that Respondent violated statutes regulating controlled substances and dangerous drugs, including Code section 4059 and Health and Safety Code section 11173, as set forth above in paragraphs 15-16.

**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 122881, issued to Vanessa Elaine Kirby;
- 2. Ordering Vanessa Elaine Kirby 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: <u>December 12, 2019</u>	 _____ ANNE SODERGREN Interim Executive Officer Board of Pharmacy Department of Consumer Affairs State of California <i>Complainant</i>
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