

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

In the Matter of the Accusation Against:

REBEKAH ANN BARTLETT, Respondent

Pharmacy Technician Registration No. TCH 90791

Agency Case No. 6771

OAH No. 2020060756

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 December 23, 2020.

It is so ORDERED on November 23, 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

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

In the Matter of the Accusation Against:

REBEKAH ANN BARTLETT, Respondent

Case No. 6771

OAH No. 2020060756

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings, heard this matter by videoconference on September 9 and 10, 2020, in Sacramento, California.

Deputy Attorney General Jeffrey M. Phillips represented complainant Anne Sodegren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Rebekah Ann Bartlett represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 10, 2020.

FACTUAL FINDINGS

Jurisdictional Information

1. The Board issued Pharmacy Technician Registration No. TCH 90791 (registration) to respondent on June 5, 2009. The registration was in full force and effect at all times relevant to this action, and expired on August 31, 2020.

2. On March 2, 2020, complainant, acting solely in her official capacity, signed and thereafter issued an Accusation against respondent seeking to revoke or suspend respondent's registration based on allegations that she engaged in dishonest and deceitful acts, unlawfully possessed and furnished controlled substances, and violated laws and regulations governing pharmacy as described below.

3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code sections 11505 and 11509. This hearing followed.

Respondent's Conduct at CVS Valley Springs

4. From January 2018 through May 2019, respondent worked for CVS Pharmacy in Valley Springs, California, as a pharmacy technician. On or about April 19, 2019, a customer reported to store manager Caitlin Albright that respondent took candy from a store display and ate it without paying for it. Ms. Albright reviewed the store security video, which showed respondent removing the candy from a display, concealing it under her cash register, then eating it. Ms. Albright informed CVS District Asset Protection Leader Jerry Rivera, and arranged for him to review the video footage and meet with respondent.

5. On May 2, 2019, Mr. Rivera met with Ms. Albright and reviewed the video footage. Ms. Albright also confirmed through store records that respondent had not paid for the candy she consumed. Later that day, Mr. Rivera, Ms. Albright, and respondent met in Ms. Albright's office.

6. At the beginning of the meeting, Mr. Rivera explained his duties and responsibilities to respondent. He asked respondent if she had possibly taken any store items unintentionally without paying for them. Respondent initially denied that she had taken anything. When asked if she was certain, respondent reiterated her denial. Mr. Rivera informed respondent that her theft had been captured on video. Respondent stated she took a bottled water without paying, because the line at the register was too long at the time and she forgot to return later and pay for it later. Mr. Rivera asked respondent several more times whether she had taken any other items from the store. Eventually, respondent admitted she had taken the candy. She further admitted she had taken 10 to 20 phentermine hydrochloride (phentermine) tablets from the pharmacy during the preceding months.¹

7. Mr. Rivera's interview with respondent lasted approximately one hour. When the interview concluded, respondent completed a handwritten statement on a form provided by Mr. Rivera. She completed the initial portion of the form by writing "I, Rebekah Bartlett hereby make this statement voluntarily to CVS Pharmacy and to

¹ Phentermine is a Schedule IV controlled substance designated by Health & Safety Code section 11057, subdivision (f) (2), and a dangerous drug as defined in Business and Professions Code section 4022.

Jerry Rivera on May 2, 2019 at 5:02 p.m.” In her statement, respondent made the following admissions in response to questions written by Mr. Rivera:

[Please explain the violations of company policy that we discussed today.] I have taken company property on three separate occasions, one being an Aquafina water (small), Reese’s peanut butter egg, and phentermine from the pharmacy. I have been threatened by an acquaintance to get her the pills which I did or there would be physical harm done to me.

[When was the first time that you stole from CVS Pharmacy?] I work at another store where I consumed something I forgot to pay for it was the first time. Then the phentermine 37.5 milligrams approximately 10-20 tablets which (*sic*) I’d given to my acquaintance. Also about two weeks ago [I] took a water that I then left the store [with] without paying for and the Reese’s egg and forgot to pay for it upon departing the store, it was [an] accident. However, the phentermine 37.5 milligrams 10-20 tablets was a mistake I will never do again.

I went to the shelf where the phentermine was, I took it from the shelf [and placed] it in my scrubs pocket, waited until my lunch break and exited the pharmacy [and] took it to my car, which was approximately two hours after placing it in my pocket. After work my acquaintance met me where I gave her the phentermine. In return she didn’t cause

physical harm to me. I've not seen her since. I've never returned to that area since.

[Why did you decide to steal and divert drugs from CVS Pharmacy?] The edible items I stole because I got hungry in the pharmacy, we don't get breaks over a five-hour period and the water [was taken because] I was thirsty. The medication I'm on makes my mouth dry not that I'm making excuses I just forgot to pay. The phentermine I deliberately stole for my own benefit so I would not get physically hurt. There was a lot of threats and pressure on me to steal it over the course of about a month. I have not succumbed to that pressure since then and will never again. The guilt I felt was worse than it would have been to just deal with the physical beating. I will never do this again for any reason. I've never done anything of this nature before. It was extremely stressful.

[What is a total loss you've cost CVS Pharmacy due to your actions?] The phentermine 37.5 milligrams approximately 10-20 tablets was a total cost of \$239.80 for 20 tablets. Also the Reese's peanut butter egg [was] worth \$1.25 retail and the Aquafina water [had a] retail value of \$1.99, which I ultimately stole by way of leaving the store without paying.

[Have any threats or promises been made to you today?] No.

8. Respondent signed and dated the statement. She listed the time she completed and signed the statement as 6:01 p.m. Respondent went to her car unescorted for approximately 15 minutes to take a break and to take prescription medication. When she returned, Ms. Albright suspended respondent from employment and directed her to leave the store. Respondent's admissions were reported to the Board and to Gregory Keith, the CVS Valley Springs Pharmacist-in-Charge, for investigation.

CVS Valley Springs Investigation

9. Mr. Keith investigated the suspected theft at the request of the Board. He noted that phentermine tablets were stored in an unsecured area the pharmacy generally obscured from view by store displays. On May 19, 2019, he performed an inventory audit to determine whether any phentermine tablets were missing from inventory. Mr. Keith's investigation revealed that the pharmacy was missing one 30 milligram capsule of phentermine, 136 37.5 milligram phentermine tablets, and 132 37.5 milligram phentermine tablets of a different type. Mr. Keith determined these losses were due in part or in total to respondent, based on her admissions to Mr. Rivera on May 2, 2019. Respondent was terminated from employment and the results of Mr. Keith's investigation were reported to the Board and the U.S. Department of Justice, Drug Enforcement Administration.

Board Investigation

10. On June 12, 2019, Sarah Mullen, a Board inspector assigned to the Drug Diversion and Fraud Team, visited the CVS Valley Springs store and performed an audit. Ms. Mullen's audit resulted in the same findings Mr. Keith's audit revealed about the missing phentermine.

11. Ms. Mullen made multiple attempts to interview respondent, to no avail. However, on July 9, 2019, Ms. Mullen obtained an email from respondent, which included the following statements:

On May 2, 2019, I was pulled from the pharmacy approximately one hour after my shift had started by Caitlin the store manager. I was taken to the manager's office where [I met Jerry Rivera] who stated he was the loss prevention for my store. He started the conversation with me rather calm and peaceful gaining my trust and trying to relax me. He asked me about my home life and family, so on and so forth. This conversation lasted about 30 minutes or so, then it got to the real reason or so I thought for the meeting.

He asked me if I ever stole anything . . . from the store. I said "no." He said: "even by mistake or on accident?" I still claimed "no." He said: "what would you say if I said I have it on video?" I started to cry and admitted to him, that yes one day I took a Reese's peanut butter egg, and a water during my shift due to the fact that CVS doesn't give [pharmacy technicians] breaks and I was thirsty and hungry. I intended to pay for it although I simply forgot. . . . He then said: "And was there anything other than that you took without permission?" I again repeated the same and answered "no!" After 3 to 4 hours of badgering me I was getting pretty claustrophobic and my anxiety level became

elevated. I asked if there was any way I could please go to my car and take my medication? He said: "Sure."

I [went to] my car, where I took my medication and tried to calm down. . . . [I returned to the office and Mr. Rivera] started in again, I stuck with the same answers as before. Now it's been about six hours of this. He stated "I've got all night" earlier in the conversation. Finally, thinking to myself "wow this is going to go all night." Finally, I said: "Fine, yes, I took a couple of pills from the pharmacy." Crying even harder because I was admitting to something I would never do. He said: "How many are a few?" I said: "About 20." He asked: "What kind?" I just said the first medication that came to my mind: "Phentermine." Then he asked why. I told them for my friend and that she would kick my butt if I didn't get them.

Finally, I thought [they were] going to let me go home, well I was wrong he gave me a piece of paper and proceeded to dictate to me what to write, I wrote it signed it against my will and went home. The police never showed up. He never showed me the video I asked to see. There isn't any because I never stole/took any pills only the above-mentioned items I had agreed to. By this time, [the meeting with Rivera and Albright had lasted] approximately seven hours and about 20 minutes.

(Punctuation added for clarity.)

12. By letter dated March 24, 2020, respondent, provided the following statements, in relevant part, to the Board:

I already wrote a statement . . . of the events as they actually unfolded on May 2, 2019 the day of the unlawful [detention] in which they (CVS loss prevention officer and store manager of the Valley Springs location) held me in a room for 7.5 hours trying to talk me into admitting guilt for something.

I did admit that . . . one day I had a long shift and was famished. . . . So I took a bottle of water and a Reese's peanut butter egg, totally planning on paying for it when someone was available to ring me up. I arrived home realizing I had the wrapper in my possession still, I hadn't paid for it. Thinking "whatever" I tossed the wrapper.

They reprimanded me on the theft of those items, stating that I would have to make restitution for them. I was thinking I guess that's it. No, it wasn't the end. They repeatedly questioned and taunted me to "admit it, it's okay if you just tell us." Then he stated he had it on video so I just confess[ed]. And I asked to see it and he wouldn't let me see any video, because there isn't one. I had nothing to tell. So [by] this point it's reaching the six-and-a-half-hour mark. I just wanted out of the room they had closed us in. [I went] to my car and [took] a break.

I returned to the room a little relieved now that I had gotten a little air, (I have severe anxiety, I'm claustrophobic, OCD and have bipolar disorder). At this point I began to feel closed in again and thought to myself how can I get out of this closed in a room. I can just tell them I took a couple of tablets or something someone would want to take like a narcotic and is accessible to a [pharmacy technician]. . . . So, then I thought phentermine is accessible and I'm pretty sure it would be considered as a desirable drug to take.

I started to cry knowing I was about to admit to something I didn't do! I told [Mr. Rivera] I had taken a few phentermine. He asked: "How many?" I responded: "Ten or twenty, I guess." He then proceeded to inform me I need to put this in writing. He put the tablet and pen in front of me and told me what to write down. He proceeded to dictate what to write, he also stated he had called the sheriff's office to have them come out, he made me wait a while. They never showed.

Testimony of Jerry Rivera

13. Mr. Rivera has worked in the asset protection and loss prevention field for over 20 years and has worked as a District Asset Protection Leader for CVS for approximately two-and-a-half years. Mr. Rivera follows an established procedure when interviewing employees regarding theft and believed he followed the same procedures when he interviewed respondent on May 2, 2019. This procedure involves doing what

he can to make sure the employee is comfortable and explaining his responsibilities. He ensures the employee is closest to the exit, so the employee does not feel confined. He then raises the concerns that involve the employee. He always tells the employee the interview is "just a discussion," and that the employee's participation is voluntary and the employee may leave at any time. He will also generally ask whether the employee needs a break or a drink of water.

14. Mr. Rivera testified that the May 2, 2019 meeting with respondent lasted approximately an hour and 45 minutes, and that at no time was respondent prohibited from leaving. He testified that respondent initially denied stealing anything, but then admitted to stealing water. After being asked whether she committed any other thefts and being told her actions were recorded on video, respondent admitted she stole candy and phentermine tablets from CVS. Mr. Rivera emphasized that at no point was respondent coerced to admit to any crime, nor was respondent told what to write in her May 2, 2019 statement.

Testimony of Caitlin Albright

15. Ms. Albright testified that the May 2, 2019 meeting with respondent lasted approximately two hours and that respondent was always free to leave. She testified that after respondent initially denied she had taken anything, respondent admitted to forgetting to pay for a bottle of water, and then after additional questioning, admitted to stealing candy and phentermine tablets. Ms. Albright recalled that respondent claimed she took the phentermine because she was being physically threatened by a friend, but refused to identify that person. Ms. Albright opined that respondent's claim she would be harmed if she did not steal the phentermine was a fabrication, because respondent "appeared to be making it up as she went along." Ms. Albright testified that respondent wrote and submitted the May 2, 2019 statement of

her own free will. The only assistance respondent received when completing her statement was when Mr. Rivera used his cell phone to provide beginning and end times for the statement, and when Ms. Albright helped calculate the store's loss by identifying the prices of the stolen items.

Respondent's Testimony

16. Respondent testified that she is a quiet, family-oriented person and the mother of three adult children. She admitted she inadvertently took a bottle of water while working at CVS because she was thirsty and forgot to pay for it. She also admitted that she took and consumed a Reese's peanut butter egg while working, without paying for it. She apologized for taking the water and candy.

17. Respondent denied she stole any phentermine from CVS and said it was a mistake for her to say she took it, when she had not. She said she "lied" when she admitted she stole phentermine because Mr. Rivera kept asking her "is there anything else you have taken because we have video." Respondent stated that she was very confused and upset when she wrote the May 2, 2019 statement. She stated she wrote what Mr. Rivera told her to write and signed the statement even though it was untrue. She asserted she felt "badgered" and "claustrophobic" during her interview, and believed that if she admitted to stealing drugs she would be allowed to leave the meeting.

18. Respondent acknowledged that although she made written statements to Ms. Mullen and the Board that her meeting with Mr. Rivera and Ms. Albright lasted over six-and-a-half hours, the meeting actually lasted approximately two hours. She denied purposefully exaggerating the length of the meeting, but explained it seemed to last much longer than it did because she was badgered and felt trapped.

Analysis

19. Pursuant to California Code of Regulations, title 16, section 1760, the Board has adopted Disciplinary Guidelines (Guidelines). The Guidelines provide that when determining the penalty to be imposed in a given case, the following applicable factors should be considered:

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

11. overall criminal record.
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code.
13. time passed since the act(s) or offense(s).
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.
15. financial benefit to the respondent from the misconduct.
16. other licenses held by the respondent and license history of those licenses.
17. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (see Business and Professions Code Section 315).

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

20. Complainant established that respondent stole water, candy, and controlled substances from her employer, CVS. Although respondent claimed she

intended to pay for the candy and water but forgot, that the line to pay for those items may have been too long, and that she was hungry and thirsty, those circumstances do not justify taking items from your employer without paying for them. Respondent's admitted theft of controlled substances is far more serious. She subsequently claimed she did not actually steal phentermine and that her verbal and written admissions were false statements produced by coercion. These assertions were wholly lacking in credibility and inconsistent with the state of the evidence established at hearing. Respondent's July 9, 2019 and March 24, 2020 written statements were similarly incredible, self-serving and unpersuasive. There was no evidence that respondent was "badgered" during the May 2, 2019 meeting, no evidence that she was prohibited from leaving the meeting, and no evidence that anyone coerced her to admitted to a theft she did not commit.

21. Complainant did not establish that respondent furnished controlled substances to another person. Although respondent initially stated she stole phentermine from CVS to provide the drugs to an acquaintance, the evidence did not establish whether respondent provided the phentermine to anyone else.

22. Applying the Guideline factors, the potential harm to the public created by respondent's actions in diverting controlled substances from CVS was severe. As a registered pharmacy technician, respondent was trusted and required to exercise good judgment in adherence to pharmacy laws and regulations. On at least one occasion, she failed to do so by stealing phentermine from CVS. The potential harm from stealing candy or a bottle of water is not as significant as diverting controlled substances, but it nevertheless demonstrates that respondent acted dishonestly, betrayed her employer's trust, and failed to exercise good judgment. There was no

evidence that respondent has a history of violating pharmacy laws. However, these incidents are also fairly recent as they occurred approximately 18 months ago.

23. Respondent's failure to take responsibility for her conduct is concerning. Respondent repeatedly changed her story, initially denying she stole anything, then admitting to taking water and candy. She further admitted she stole phentermine, after she learned she was observed on video. She then recanted, claiming she lied when she admitted to stealing phentermine, ostensibly so she would be permitted to leave the meeting with Mr. Rivera and Ms. Albright. This assertion was not persuasive. Respondent admitted the meeting was not unreasonably long, and two credible witnesses testified that she was free to leave. Respondent's testimony, and written statements, appeared contrived to minimize her bad acts rather than to simply tell the truth.

24. Respondent also minimized the significance of her theft of candy and water. She attributed her conduct to her employer by claiming she took those items because she was hungry and thirsty after being required to work without breaks for several hours. Respondent failure to accept responsibility for her acts demonstrates that she has not taken an essential step towards rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [her] actions is an essential step towards rehabilitation."].)

25. The Board must be assured that respondent will not repeat her conduct and that she will not pose harm to the public. Due to the seriousness of respondent's conduct and her failure to acknowledge its wrongfulness, she did not establish that she can be trusted with controlled substances in the workplace, nor that she has

undergone the rehabilitation needed to demonstrate that she does not pose an ongoing threat of harm to the public.

26. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) When all the evidence presented in this case is considered, protection of the public can only be achieved through revocation of respondent's registration.

Costs of Investigation and Enforcement

27. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. As of September 2, 2020, the Board incurred \$10,172.50 in attorney charges in connection with the prosecution of this case. The Deputy Attorney General assigned to the matter submitted a certification of prosecution costs at hearing, with an attachment titled "Matter Time Activity By Professional Type" identifying the tasks performed, time spent on those tasks, and the hourly rate for each task. In addition, the Board incurred \$4,053.50 in investigation costs, and submitted a Certification of Investigative Costs: Declaration of Sara Mullen, identifying investigative tasks, the time spent on those tasks, and the hourly rate charged for those tasks. These enforcement and investigative costs total \$14,226 and are reasonable based on the allegations in the Accusation and the evidence presented at hearing.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) “Clear and convincing evidence” requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable Law

2. Business and Professions Code section 4300 provides that the Board may suspend or revoke any certificate, license, permit, registration, or exemption, and may suspend the right to practice or place the licensee on probation.

3. Business and Professions Code section 4300 provides that the expiration or the voluntary surrender of a Board-issued 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.

4. Business and Professions Code section 4301 provides, in relevant part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including:

[¶] . . . [¶]

(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 of 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.

5. Business and Professions Code section 4059, subdivision (a), provides, in relevant part, that a "person may not furnish any dangerous drug, except upon the prescription of a physician. . . ."

6. Business and Professions Code section 4060 provides, in relevant part, that a "person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician. . . ."

7. Pursuant to Health and Safety Code section 11350, subdivision (a):

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

8. Pursuant to Health and Safety Code section 11171, "[n]o person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by [the Uniform Controlled Substances Act].

9. Pursuant to Health and Safety Code section 11173, subdivision (a), "[n]o 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."

Cause for Discipline

10. As specified in Factual Findings 4 through 7, 9, 10, and 20, cause exists to discipline respondent's registration pursuant to Business and Professions Code section 4301, subdivisions (f) and (j). Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption, and violated laws regarding controlled substances or drugs when she stole water, candy, and phentermine, a controlled substance, from her employer.

11. As specified in Factual Findings 4 through 7, 9, 10, and 20, cause exists to discipline respondent's registration pursuant to Business and Professions Code section 4301, subdivision (o). Respondent violated laws regarding pharmacy when she stole phentermine from her employer, and in doing so possessed phentermine without authorization or a valid prescription.

12. As specified in Factual Finding 21, cause does not exist to discipline respondent's registration pursuant to Business and Professions Code section 4509 subdivision (a), or Health and Safety Code section 11171 for furnishing phentermine to another without a valid prescription.

Cost of Investigation and Enforcement

13. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges

dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has 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.

14. As specified in Factual Finding 27, the reasonable costs of investigation and prosecution in this case is \$14,226. When all the *Zuckerman* factors are considered, there is no basis to reduce these costs. However, because respondent's income will likely be affected by the loss of her registration, she should be ordered to pay these costs only in the event respondent reapplies for reinstatement of her registration and as a condition of said reinstatement.

Conclusion

15. When considering the Factual Findings and Legal Conclusions as a whole, it would be contrary to the public interest to allow respondent to retain her pharmacy technician registration.

ORDER

1. Pharmacy Technician Registration No. TCH 90791, issued to Rebekah Ann Bartlett is REVOKED.

//

//

//

//

2. In the event respondent applies for reinstatement of her registration, she shall pay to the Board the costs of investigation and prosecution of this matter, in the amount of \$14,226, in such manner as the Board directs.

DATE: October 12, 2020

DocuSigned by:
Ed Washington
D1857747BA4F405...

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7914
Facsimile: (916) 327-8643
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:

Case No. 6771

13 **REBEKAH ANN BARTLETT**

14 P.O. Box 192
Plymouth, CA 95669

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 90791**

Respondent.

17
18
19 **PARTIES**

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

22 2. On or about June 5, 2009, the Board issued Pharmacy Technician Registration
23 Number TCH 90791 to Rebekah Ann Bartlett (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on August 31, 2020, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

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

4. Section 4300 of the Code states, in pertinent 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.

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 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. 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, of any other state, or of the

1 United States regulating controlled substances and dangerous drugs.

2 ...

3 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
4 abetting the violation of or conspiring to violate any provision or term of this chapter
5 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.

6 ...

7
8 7. Section 4022 of the Code states:

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

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

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

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

16 8. Section 4059 of the Code states, in pertinent part:

17 (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
18 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7.

19
20 9. Section 4060 of the Code states, in pertinent part:

21 No person shall 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
22 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
23 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

25
26 10. Section 11007 of the Health and Safety Code states:

27 'Controlled substance,' unless otherwise specified, means a drug, substance, or
immediate precursor which is listed in any schedule in Section 11054, 11055, 11056,
28 11057, or 11058.

1 11. Section 11171 of the Health and Safety Code states:

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

4 12. Section 11173, subdivision (a) of the Health and Safety Code states:

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

8 **COST RECOVERY**

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

13 **DRUG INFORMATION**

14 14. **Phentermine** is a Schedule IV controlled substance designated by Health and
15 Safety Code section 11057, subdivision (f)(2), and a dangerous drug as defined in Code section
16 4022.

17 **BACKGROUND INFORMATION**

18 15. At the time of the events set forth herein, Respondent was employed as a Pharmacy
19 Technician at CVS Pharmacy #09390, located at 200 E. Highway 12, Ste D, Valley Springs, CA
20 95252 (CVS).

21 16. On or about May 30, 2019, the Board received a DEA 106 form - *Report of Theft of*
22 *Loss of Controlled Substances* from CVS, indicating suspected employee theft of the controlled
23 substance phentermine.

24 17. On or about May 2, 2019, during an interview with CVS Asset Protection Manager
25 J.R., Respondent admitted to stealing 10-20 pills of phentermine from CVS by taking them off
26 the shelf, concealing them in her smock, and then taking them to her car two hours later. On that
27 same day, CVS obtained a written statement from Respondent, admitting to stealing 10-20
28 phentermine 37.5 mg tablets from CVS, and giving them to an acquaintance. Respondent stated

1 that she deliberately stole the phentermine for her own benefit so she would not be physically
2 hurt, since she had been threatened and pressured by an acquaintance to steal the drug.
3 Respondent signed a promissory note stating she would reimburse CVS in the amount of \$243.04
4 for the theft. After the interview, Respondent's employment with CVS was terminated and the
5 Calaveras County Sheriff's Department was notified.

6 18. On or about June 6, 2019, the Board received an internal audit summary from CVS
7 that indicated an overall loss for the pharmacy of one phentermine 30 mg capsule and 268
8 phentermine 37.5 mg tablets for the period from May 1, 2018, to May 15, 2019.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Acts Involving Dishonesty, Fraud, Deceit, or Corruption)**

11 19. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
12 for unprofessional conduct, in that while employed and on duty as a pharmacy technician at CVS,
13 Respondent committed acts involving dishonesty, fraud, deceit, or corruption, as more
14 particularly set forth above in paragraphs 15 through 18.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unlawful Possession of Controlled Substances)**

17 20. Respondent is subject to disciplinary action under Code section 4060 and Health
18 and Safety Code section 11173, subdivision (a), by and through Code section 4301 subdivisions
19 (j) and (o) for unprofessional conduct, in that while employed and on duty as a pharmacy
20 technician at CVS, Respondent possessed the controlled substance (phentermine) without
21 authorization or a valid prescription, as more particularly set forth above in paragraphs 15 through
22 18.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unlawful Furnishing of Controlled Substances)**

25 21. Respondent is subject to discipline under Code section 4059, subdivision (a), and
26 Health and Safety Code 11171, by and through Code section 4301 subdivisions (j) and (o) for
27 unprofessional conduct, in that while employed as a pharmacy technician at CVS, Respondent
28 furnished a controlled substance and dangerous drug (phentermine) to another person without a

valid prescription, as more particularly set forth above in paragraphs 15 through 18.

FOURTH CAUSE FOR DISCIPLINE

(Violating Laws and Regulations Governing Pharmacy)

22. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct, in that while employed and on duty as a pharmacy technician at CVS, Respondent violated or attempted to violate, directly or indirectly, laws governing pharmacy, as more particularly set forth above in paragraphs 19 through 21.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 90791, issued to Rebekah Ann Bartlett;
2. Ordering Rebekah Ann Bartlett to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: March 2, 2020



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

SA2019104091
14385389.docx