

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

**ANDREW RIOS
12465 Cypress Ave
Chino, CA 91710**

**Pharmacy Technician Registration No. TCH
157137**

Respondent.

Case No. 6790

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 19, 2020, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 6790 against Andrew Rios (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about December 22, 2016, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 157137 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 6790 and will expire on January 31, 2022, unless renewed.

1 3. On or about March 23, 2020, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 6790, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 12465 Cypress Ave
8 Chino, CA 91710.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505(c) and/or Business and Professions Code section 124.

11 5. Government Code section 11506(c) states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense . . . and the notice shall be deemed a specific denial of all
14 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
15 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
16 discretion may nevertheless grant a hearing.

17 6. The Board takes official notice of its records and the fact that Respondent failed to
18 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
19 waived his right to a hearing on the merits of Accusation No. 6790.

20 7. California Government Code section 11520(a) states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense . . . or to appear at
22 the hearing, the agency may take action based upon the respondent's express
23 admissions or upon other evidence and affidavits may be used as evidence without
24 any notice to respondent

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
28 as well as taking official notice of all the investigatory reports, exhibits and statements contained
therein on file at the Board's offices regarding the allegations contained in Accusation No. 6790,
finds that the charges and allegations in Accusation No. 6790, are separately and severally, found
to be true and correct by clear and convincing evidence.

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 MARC D. GREENBAUM
Supervising Deputy Attorney General
4 State Bar No. 138213
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6316
6 Facsimile: (916) 731-2126
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 6790

13 **ANDREW RIOS**
12465 Cypress Ave
14 Chino, CA 91710

ACCUSATION

15 Pharmacy Technician Registration No. TCH
157137

16 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, Department of Consumer Affairs (Board).

22 2. On or about December 22, 2016, the Board issued Pharmacy Technician Registration
23 No. TCH 157137 to Andrew Rios (Respondent). The Pharmacy Technician Registration was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 January 31, 2020, unless renewed.

26 **JURISDICTION**

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

1 **STATUTORY PROVISIONS**

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

6 5. Section 492 states:

7 “Notwithstanding any other provision of law, successful completion of any diversion
8 program under the Penal Code, or successful completion of an alcohol and drug problem
9 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of
10 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
11 (commencing with Section 500) of this code, or any initiative act referred to in that division, from
12 taking disciplinary action against a licensee or from denying a license for professional
13 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
14 pertaining to an arrest.

15 “This section shall not be construed to apply to any drug diversion program operated by any
16 agency established under Division 2 (commencing with Section 500) of this code, or any
17 initiative act referred to in that division.”

18 6. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
19 revoked.”

20 7. Section 4300.1 states:

21 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
22 operation of law or by order or decision of the board or a court of law, the placement of a license
23 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
24 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
25 proceeding against, the licensee or to render a decision suspending or revoking the license.”

26 8. Section 4301 states:

27 “The board shall take action against any holder of a license who is guilty of unprofessional
28 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is

1 not limited to, any of the following:

2

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

5

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

10 7. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to
11 possess a controlled substance without a valid prescription.

12 **PHARMACY LAW**

13 9. Section 4060 states:

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

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

28 ///

1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

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

13 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

14 12. Methamphetamine is a Schedule II controlled substance as designated by Health and
15 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
16 Business and Professions Code section 4022.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Possession of a Controlled Substance/Dangerous Drug**
19 **– Methamphetamine - December 22, 2018)**

20 13. Respondent is subject to disciplinary action under sections 4300, and 4301,
21 subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that
22 Respondent violated or attempted to violate the Pharmacy law when he was in possession of a
23 controlled substance and dangerous drug, Methamphetamine, without a valid prescription. The
24 crime or act is substantially related to the qualifications, functions, or duties of a registered
25 pharmacy technician. On December 22, 2018, Respondent informed officers that the
26 methamphetamine and glass smoking pipe found in his possession were his and that he has been
27 using methamphetamine for approximately one year, on and off. Respondent was in possession
28 of 0.77 grams of tested methamphetamine.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Violating Drug Statutes - December 22, 2018)**

3 14. Respondent is subject to disciplinary action under sections 4300, 4301,
4 subdivision (j), on the grounds of unprofessional conduct, in that on and about December 22,
5 2018, Respondent violated Health and Safety Code section 11377, subdivision (a), when he was
6 in possession of a controlled substance and dangerous drug, Methamphetamine, without a valid
7 prescription. Complainant refers to and by this reference incorporates the allegations set forth
8 above in paragraph 13, inclusive, as though set forth fully.

9 **DISCIPLINE CONSIDERATIONS**

10 15. To determine the degree of discipline, Complainant alleges that:

11 a. On or about June 13, 2012, admittedly, Respondent was in possession of a usable
12 quantity of Methamphetamine, 0.2 grams, at a high school Grad Night event at Disneyland.
13 Subsequently, on or about January 21, 2014, after Respondent's plea of guilty for violating Health
14 and Safety Code section 11377(a) [possession of a controlled substance) and completing the
15 Penal Code section 1000 deferred entry of judgment program, the Court dismissed the criminal
16 proceeding entitled *The People of the State of California v. Andrew Rios* (Super. Ct. Orange
17 County, No. 12NF1883).

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician Registration No. TCH 157137, issued
22 to Andrew Rios;

23 2. Ordering Andrew Rios to pay the Board the reasonable costs of the investigation and
24 enforcement of this case, pursuant to section 125.3; and,

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: March 19, 2020



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

LA2019503371
53849250.docx