

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

In the Matter of the Accusation Against:

JUAN CARRILLO, Respondent

Pharmacy Technician Registration No. TCH 19328

Agency Case No. 6800

OAH No. 2019120136

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 November 4, 2020.

It is so ORDERED on October 5, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", written in a cursive style.

By

Greg Lippe
Board President

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the First Amended Accusation Against:

JUAN CARRILLO, Respondent

Pharmacy Technician Registration No. TCH 19328

Agency Case No. 6800

OAH No. 2019120136¹

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 21 and 22, 2020, by videoconference in Los Angeles, California.

¹ This matter was consolidated with OAH Case Number 2019120135 for hearing only. Pursuant to California Code of Regulations, title 1, section 1016, subdivision (d), separate proposed decisions are issued for these consolidated matters.

Diana Petikyan, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

Nicole Valentine, Attorney at Law, represented Juan Carrillo Jr. (respondent).

Oral and documentary evidence was received. The record was held open until July 29, 2020, for respondent to submit an additional character reference letter from Vivian Nguyen. Complainant stipulated to the admission of the letter as administrative hearsay. Respondent did not submit the character reference letter. On July 29, 2020, the ALJ closed record, and the matter was submitted for decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 5, 1996, the Board issued pharmacy technician registration number TCH 19328 to respondent. This pharmacy technician registration was in full force and effect at all times relevant herein and is scheduled to expire on October 31, 2021, unless renewed.

2. On March 19, 2020, complainant filed the First Amended Accusation in her official capacity. Respondent timely filed a Notice of Defense. This hearing ensued.

Respondent's Background

3. Respondent is 45 years old. He grew up in the City of Huntington Park in California. After graduating from high school in 1994, respondent attended California State University, Long Beach (Cal State Long Beach) as a biology major. In 1995,

respondent dropped out of Cal State Long Beach due to financial constraints, and he began working for S & S Pharmacy as a pharmacy clerk-typist. In 1996, respondent became a registered pharmacy technician with the California Board of Pharmacy based on having obtained equivalent experience as a pharmacy clerk-typist.²

4. While working for S & S Pharmacy, respondent began pursuing an Associate's Degree program in Registered Nursing (ADN program) with Rio Hondo College in 1998. After taking one year of classes, respondent quit the ADN program due to financial constraints in 1999. After he stopped attending school, respondent continued to work as a pharmacy technician for S & S Pharmacy, which changed its name to the Medicine Cabinet in 2004.

5. In 2008, respondent returned to Rio Hondo College in an attempt to pursue the ADN program again. He was given the option of either starting the ADN program from the beginning, without any credit for the one year of classes he had taken in 1998, or applying the credit for that one year of classes towards a licensed vocational nurse (LVN) degree. Respondent chose the latter option, completed the LVN program at Rio Hondo College in 2008, and became a licensee of the Board of Vocational Nursing and Psychiatric Technicians (LVN Board) in 2010.

6. Even as he attended school at Rio Hondo College, respondent continued to work as a pharmacy technician at the Medicine Cabinet until 2011. From November

² Pursuant to California Code of Regulations, title 16, section 1793.4, subdivision (e), which has been repealed, an applicant may obtain a pharmacy technician registration by completing one year of experience with a minimum of 1,500 hours of performing specific duties as a pharmacy clerk-typist.

2011 until the present, respondent has been employed as an LVN at Monterey Park Hospital.

International Nursing Tutorial

7. In 2012, respondent once again considered obtaining a registered nursing (RN) degree. He looked into several schools but found the private RN schools to be expensive, while the community college programs had long waitlists. Sometime in early 2012, respondent met a woman, who was also an LVN, at a restaurant. She told him about an RN school called International Nursing Tutorial (INT) that is affiliated with the University of Belize. After respondent learned INT offered a one-year RN program that costs \$10,000 in tuition, he obtained INT's phone number and contacted INT's director, John Malone (Malone).

8. Respondent subsequently met with Malone, took a tour of INT's classrooms, and began taking classes in May 2012. Respondent attended classes at INT for four hours every Friday, from 8 a.m. to 12 p.m. After taking one year of these classes at INT, but without having completed any clinical coursework, respondent received a diploma from the University of Belize indicating he received a bachelor's degree in RN on June 15, 2013. (Ex. 8, p. 133.)

9. According to respondent, it did not strike him as odd that without ever having been to Belize, he received his degree from the University of Belize because he believed that INT was affiliated with the university. Nor did it strike respondent as odd that the INT program was only one year long because he believed that many other schools offered LVNs the opportunity to complete an RN program in one year. It also did not strike respondent as odd that clinical practice was not a part of the INT

curriculum because he believed that INT was in the process of obtaining approval for clinical coursework.

10. INT, however, was a scam. It has no affiliation with the University of Belize. Malone forged transcripts and diplomas and sent them to independent credential evaluation services, agencies that evaluate foreign transcripts and validate foreign education as equivalent to academic programs offered in the United States. Some of these credential evaluation services conducted evaluations and discovered the fraud, while others validated the falsified transcripts and forwarded them to licensing agencies for purposes of obtaining licensure.

Respondent's Application to CGFNS International

11. After he graduated from INT, respondent, working with Malone, applied to a credential evaluation service named CGFNS International in April 2014. Respondent's application to CGFNS International requested it to report the results of its evaluation to the California Board of Registered Nursing (BRN) and the Arizona State Board of Nursing (Arizona Nursing Board). (Ex. 11, p. 222.)

12. Sometime between April 2014 and May 13, 2014, Malone sent falsified academic records purportedly from the University of Belize to CGFNS International on respondent's behalf.

13. On May 13, 2014, respondent received an email from CGFNS International stating that the organization encountered problems when it reviewed the documents provided by his school. Specifically, CGFNS International notified respondent that a "valid signature was not provided" and that a "valid seal was not provided." (Ex. 16, p. 338.) The email sought respondent's assistance in verifying his

school information. On July 10, 2014, respondent forwarded this email message to Malone. (*Ibid.*)

14. On September 10, 2014, CGFNS International sent a second email to respondent, stating that it discovered the following problems in reviewing the documents purportedly provided by the University of Belize: (1) a valid signature was not provided; (2) a transcript/nursing form was not sent directly from the school; (3) a valid title was not provided; and (4) a valid seal was not provided. (Ex. 16, p. 340.) On September 11, 2014, respondent again forwarded this message to Malone. (*Ibid.*)

15. A. On October 2, 2014, CGFNS International wrote a letter to respondent notifying him that it completed an investigation and review of respondent's application for credentials evaluation service. The letter stated, in part:

There was a discrepancy with the Transcript of Record
CGFNS International received. To verify this discrepancy, we
requested that the University of Belize confirm our request.
Your school of nursing reported that the Transcript of
Record that was submitted to CGFNS International is not [a]
valid document.

(Ex. 11, p. 226.)

B. The letter further stated that as a result of these findings, CGFNS International sealed respondent's files and terminated his rights and privileges with the organization. Respondent was prohibited from applying or taking any CGFNS International qualifying examinations and having access to any CGFNS International services in the future. (*Ibid.*)

Respondent's Application to International Education Research Foundation, Inc.

16. A. After his rights and privileges were terminated by CGFNS International, respondent applied to a second credential evaluation service, International Education Research Foundation, Inc. (IERF), on October 10, 2014. Respondent requested that IERF send the results of its evaluation to the Arizona Nursing Board only.

B. In his application to IERF, in the section entitled "Education History," respondent indicated that he attended the University of Belize from August 13, 2009, to June 15, 2013. (Ex. 12, p. 230.) In response to a question asking him if he was licensed to practice nursing in his home country or another state in the United States, respondent checked a box indicating "Yes." (*Ibid.*) Respondent signed the IERF application and certified that all information contained in the application was true and correct. (*Id.* at p. 231.)

C. The information that respondent provided in his IERF application is false. Respondent has never traveled to Belize. During the period that respondent purportedly attended the University of Belize (i.e., August 13, 2009, to June 15, 2013), he was in the United States, working as a pharmacy technician at the Medicine Cabinet and as an LVN at Monterey Park Hospital. Respondent also was not licensed to practice registered nursing in Belize or in another state in the United States.

17. On November 4, 2014, respondent sent a handwritten note to IERF as a supplement to his October 10, 2014 application. Respondent wrote, "The licensing test in [B]elize is only given twice a year between those two times I had returned to the United States and was unable to take the boards therefore I do not or [sic] possess a license from the country of [B]elize." (Ex. 12, p. 232.) This statement is also false.

Respondent suggested in this statement that he was in Belize but missed the nursing license examinations in that country because he had to return to the United States at the time when the examinations were administered. However, respondent has never travel to Belize for nursing school or for any other purpose. Respondent is unlicensed as an RN in Belize, not because he missed the examinations, but because he did not complete any nursing school in Belize and therefore is unqualified to take the examinations in that country.

18. Between November 2014 and July 2015, Malone sent falsified academic records purportedly from the University of Belize to IERF on respondent's behalf.

19. On July 31, 2015, IERF sent a letter to the Arizona Nursing Board certifying that respondent earned a bachelor of nursing degree from the University of Belize on June 15, 2013. The letter further stated that the program supposedly completed by respondent required four years of study beyond completion of a secondary education and is considered comparable in level and purpose to the bachelor of science in nursing degree awarded by colleges and universities in the United States. (Ex. 12, pp. 270-272.)

20. In early 2016, IERF received an internal network alert about problems with applicants with nursing degrees from the University of Belize. IERF conducted an investigation and contacted the University of Belize regarding respondent's credentials. IERF subsequently received a letter dated May 18, 2016, from Rose Pineda (Pineda), the registrar of the University of Belize, confirming that respondent's academic records from the University of Belize were falsified. (Ex 12, p. 275.) Pineda also wrote that respondent did not attend the University of Belize and was never a part of the nursing program at the University of Belize. (*Ibid.*)

21. IERF subsequently sent several memoranda to notify other agencies, including the Federal Bureau of Investigations, that respondent's academic records were not authentic. (Ex. 12, at p. 277-280.) On May 23, 2016, IERF sent respondent a letter stating that his academic records from the University of Belize were not authentic, IERF would not prepare an evaluation report, and IERF would notify agencies to which an evaluation had been sent of the inauthentic records. (*Id.* at p. 281.)

Respondent's Application to the BRN

22. A. On November 17, 2014, respondent submitted a license application to the BRN (BRN application). In the section of his BRN application entitled "Professional Education," respondent wrote that he attended the University of Belize from August 2009 to June 2013 and that he received a bachelor of arts degree from the nursing program. (Ex. 8, p. 130.) Respondent certified under penalty of perjury that all information he provided in connection with his BRN application was correct and complete. (*Id.* at p. 131.)

B. On February 10, 2015, respondent sent to the BRN a handwritten note stating, "The [examination] is given twice a year April & November. I was not at the country at the time of the examination. Therefore, I do not have a license in Belize." (*Id.* at p. 136.)

C. In a form entitled "Request for Transcript" dated November 17, 2014, and submitted to the BRN, respondent wrote that he attended the University of Belize for four years with a graduation date of June 2013. (Ex. 8, p. 149.) In two other separate forms entitled "Breakdown of Education Program for International Educational Program for International Nursing Programs" submitted to the BRN,

respondent again wrote that he attended the University of Belize from August 2009 to June 2013.

D. As described above, the information respondent provided in his BRN application is false. Respondent did not attend the University of Belize from August 2009 to June 2013. In addition, respondent is unlicensed as a nurse in Belize, not because he missed the nursing examinations administered in April and November, but because he never completed any nursing programs in Belize that would qualify him to take the nursing examinations.

23. Between November 2014 and June 2015, Malone sent falsified academic records purportedly from the University of Belize to the BRN on respondent's behalf.

24. The BRN conducts its own evaluation of foreign academic records without using any independent credential evaluation service. Consequently, respondent's BRN application was assigned to Elsa Berumen (Berumen), BRN's International License Evaluator for an assessment.

25. On June 3, 2015, Berumen wrote to the University of Belize requesting it to verify whether respondent's academic records from the University of Belize were valid. (Ex. 8, p. 176.)

26. In a letter dated May 4, 2016, addressed to Berumen, Pineda, the registrar of the University of Belize, wrote, "We have received copies of documents submitted to the Board of Registered Nursing by [respondent]. These documents are falsified. I have proceeded to research this issue and checked the student management system of the University. This person DID NOT attend the University of Belize and WAS NEVER a part of the Nursing Program here at the University of Belize." (*Id.* at p. 185, original capitalization.)

27. On May 25, 2016, Berumen wrote a letter to respondent notifying him of BRN's determination that the program he completed is not equivalent to the requirements for BRN licensure. (*Id.* at p. 186.) In a letter dated July 1, 2016, the BRN informed respondent that his BRN application was denied because he had provided false information on his application regarding the completion of a nursing program. (*Id.* at pp. 187-188.)

Respondent's Application to the Arizona Nursing Board

28. Sometime before September 2, 2015, on a date not established by the record, respondent submitted an RN license application to the Arizona Nursing Board. Respondent indicated on his application to the Arizona Nursing Board that he had obtained a bachelor's degree in nursing from the University of Belize with a graduation date of June 2013. On May 29, 2016, respondent withdrew his application to the Arizona Nursing Board.

Investigation by the LVN Board

29. On May 5, 2016, the BRN forwarded to LVN Board the May 4, 2016 letter from Pineda regarding respondent's submission of falsified documents from the University of Belize. On June 10, 2016, the LVN Board referred the allegations against respondent to its Division of Investigation, and Investigator Helen Tennyson was assigned to the case.

30. Investigator Tennyson conducted an investigation that uncovered the facts described above. Additionally, on January 4, 2018, Investigator Tennyson called respondent to inquire about his BRN application. Respondent spoke to Investigator Tennyson by telephone and said, "that was a huge mistake. I really apologize for that." (Ex. 4, p. 76.) When Investigator Tennyson asked if she could schedule a time to meet

to discuss his attendance at INT in detail, respondent said that he did not want to talk about it because what happened at INT distressed him. Investigator Tennyson emphasized that it was important for her to find out more about INT because Malone was still operating the school at that time. However, respondent asserted that he worked twelve-hour shifts and did not have the time to meet with the investigator. He asked Investigator Tennyson if she could conduct the interview now with him on the phone, but Investigator Tennyson was unable to do so because she had another meeting scheduled. Respondent then stated that he did not wish to be interviewed at a later time. (*Id.* at pp. 76-77.)

31. Investigator Tennyson set forth her findings in an investigation report dated January 5, 2018, which was consistent with her testimony at the administrative hearing.

Testimony by Board Inspector Anna Brodsky

32. At the administrative hearing, Board Inspector Anna Brodsky testified regarding the qualifications, functions, and duties of a pharmacy technician. Inspector Brodsky received her undergraduate degree from the University of Arizona and her doctor of pharmacy degree from the University of Southern California. She has practiced as a licensed pharmacist since 2010, and she has worked in retail pharmacies, skilled nursing facilities, and specialty pharmacies. Inspector Brodsky explained that pharmacy technicians act as assistants to pharmacists. Tasks performed by a pharmacy technician include receiving prescriptions; obtaining information from the patient, such as date of birth and address; and pouring, counting, and labeling medication. Pharmacy technicians are also expected to assist patients at the cash register by handling payments. Inspector Brodsky emphasized that honesty, integrity, and sound judgment are important character traits for pharmacy technicians because they have

access to confidential patient information and controlled substances which can be diverted and sold at a premium price. Although pharmacy technicians are supervised by pharmacists, it is of utmost importance that pharmacy technicians are trustworthy, as pharmacists work in a busy setting where constant monitoring may not be possible.

Respondent's Evidence

33. At the hearing, respondent denied any knowledge that Malone sent falsified academic records on his behalf to various agencies including CGFNS International, IERF, the BRN, and the Arizona Nursing Board. Respondent claimed to be the unsuspecting victim of Malone's scam.

34. On cross-examination, respondent admitted that he had completed the portions of his application to IERF and the BRN, stating that he had attended the University of Belize from August 2009 to June 2013. Moreover, respondent admitted that in his application to the Arizona Nursing Board, he reported having attended the University of Belize as his educational background. Respondent also admitted that he handwrote the November 4, 2014 letter to IERF and the February 10, 2015 letter to the BRN, stating that he was not licensed as an RN in Belize because he was not in the country at the time that the RN examination was administered. However, respondent insisted that he committed all of these acts under Malone's direction.

35. A. Respondent's claim that he was unaware of Malone's fraudulent acts is not credible for reasons set forth below.

B. First, even assuming respondent had believed, as he asserted at the hearing, that INT was affiliated with the University of Belize, respondent only completed a one-year program at INT based in the United States. Therefore,

respondent knew his statements that he attended the University of Belize for four years were false.

C. Second, respondent is not licensed to practice as a nurse in Belize, not because he left Belize for the United States in April and November thereby missing the nursing examinations, but because he has never been to Belize and never completed any nursing programs that would have qualified him to take the nursing examinations in that country. Therefore, respondent must also have known the falsity of his statement regarding his failure to obtain a nursing license in Belize due to his absence from the country at the time the nursing examination was administered.

D. Third, according to respondent's application to the Board, he had to complete 306 hours of theory and 898 hours of clinical practice to become an LVN. (Ex. 7, p. 97.) Additionally, respondent had completed at least one year of the ADN program at Rio Hondo College in 1998. Given this educational background, it is implausible that respondent could have believed attending one year of nursing school for four hours every week without any clinical practice was sufficient to qualify him as an RN.

E. Fourth, respondent received two emails in May and September 2014 from CGFNS International notifying him of problems with the documents submitted by his nursing school, which respondent subsequently forwarded to Malone. Respondent also received a letter dated October 2, 2014, from CGFNS International informing him that his school records were invalid. Therefore, respondent was put on notice on at least three separate occasions in 2014 that his school records from the University of Belize were invalid. However, instead of questioning Malone about the authenticity of his school records, respondent subsequently submitted applications to IERF, the BRN,

and the Arizona Nursing Board, claiming that he had obtained a bachelor's degree in nursing from the University of Belize.

F. Based on the foregoing, respondent's misleading statements about his professional credentials (that he attended the University of Belize from August 2009 to June 2013 and that he was unable to obtain a nursing license in Belize because he was not in the country at the time the examinations were administered) were intentional.

36. Furthermore, on cross-examination, respondent asserted that he would have been qualified to become an RN if he had completed the clinical practice that was missing from the INT curriculum. Respondent also testified that he does not understand why the Board would have any concerns about his continued licensure as a pharmacy technician.

37. Respondent has worked as an LVN at Monterey Park Hospital since November 2011. He works in the Medical/Surgical (MedSurg) and COVID units at the hospital. Respondent submitted performance evaluations from 2015 to 2019 showing that he has consistently met performance standards across most categories at Monterey Park Hospital. Respondent has received notes of gratitude from his patients and letters of appreciation from his supervisors for his service. Monterey Park Hospital awarded respondent with an Award of Excellence in 2014, in recognition of his commitment and his compassion towards his patients.

38. Respondent also submitted several certificates demonstrating that he completed many continuing education courses, including a seven-hour course on legal and ethical issues in nursing in September 2019.

Character Evidence

39. Vivian Nguyen (Nguyen), RN, testified as a character witness on respondent's behalf. Nguyen has worked with respondent in the MedSurg unit at Monterey Park Hospital for one year. Nguyen testified that respondent is always helpful and attentive to his patients and his colleagues. Respondent has a reputation at the hospital for being skilled at intravenous (IV) insertions, and he is trusted and beloved by the doctors. Nguyen described respondent as "a team player." Nguyen gave an example of a recent incident during which one of her patients experienced a seizure and pulled out his IV. Respondent was able to calm the patient and to reinsert the IV. Because of respondent's assistance, there was no need to call security or to use any restraints on the patient. Nguyen believes that respondent is honest. Her understanding of the basis of the disciplinary action against respondent is that he went to a school where paperwork was falsified but respondent was unaware of the scam.

40. Erica Hurtado (Hurtado), RN, testified as a character witness on respondent's behalf. Hurtado has worked with respondent in the MedSurg unit at Monterey Park Hospital for three years. Hurtado described respondent as responsible and knowledgeable. According to Hurtado, respondent often helps the new nurses, and he is always on time. Respondent's patients also appreciate him. Respondent's patients have written excellent reviews about him and thank-you cards in gratitude for the help he rendered. Respondent communicates well with the doctors in the hospital, and the doctors respect and trust him. Hurtado averred that she does not know the details of the allegations against respondent, although she thinks it is about respondent's enrollment in a fraudulent school. Hurtado stated that she was not surprised about respondent's involvement in such a school, as respondent is naïve and

overly trusting of others. Hurtado submitted a letter dated December 7, 2019, which was consistent with her testimony at the hearing.

41. Respondent submitted additional character reference letters from three other colleagues. (Exs. X-Z.) These letters present respondent as a compassionate, caring, and skilled professional. However, none of the authors indicated in their letters that they were aware of the allegations against respondent. Therefore, these letters were accorded little weight.

Costs

42. Complainant submitted evidence of the costs of enforcement of this matter, summarized as follows: 29.50 hours of legal services at the rates ranging from \$170 to \$220 per hour, for total costs claimed of \$6,467.50.

43. Respondent earns approximately \$50,000 per year in wages with overtime. He lives with his parents and helps to pay approximately \$4,000 per year in property taxes on the family home. His other expenses include \$436 per month in car payments and payments for groceries, gas, and utility.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Complainant must prove his case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating

assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Law

2. Business and Professions Code section 4301 provides, in pertinent part, the following:

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 includes, but is not limited to, any of the following:

(a) Procurement of a license by fraud or misrepresentation.

[¶] [¶]

(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.

[¶] [¶]

(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.

(p) Actions or conduct that would have warranted denial of a license. . . .

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE: ATTEMPTING TO PROCURE CERTIFICATE BY FRAUD OR MISREPRESENTATION

3. Cause exists to discipline respondent's pharmacy technician registration, pursuant to Business and Professions Code section 4301, subdivision (a), in conjunction with subdivision (o), in that respondent attempted to procure an RN license from the Arizona Nursing Board and the BRN by fraud or misrepresentation. (Factual Findings 22 to 28 and 34 to 35.)

SECOND CAUSE FOR DISCIPLINE: ACTS OF MORAL TURPITUDE, DISHONESTY, FRAUD, DECEIT, OR CORRUPTION

4. Cause exists to discipline respondent's pharmacy technician registration, pursuant to Business and Professions Code section 4301, subdivision (f), in that respondent committed substantially related acts of moral turpitude, dishonesty, fraud, deceit, or corruption. (Factual Findings 22 to 28 and 34 to 35.) California Code of Regulations, title 16, section 1770 provides that "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.” The testimony of Anna Brodsky established that respondent’s attempts to procure an RN license from the Arizona Nursing Board and the BRN by fraud or misrepresentation are substantially related to the qualifications, functions, or duties of a pharmacy technician. (Factual Finding 32.)

THIRD CAUSE FOR DISCIPLINE: KNOWINGLY MISREPRESENTING FACTS

5. Cause exists to discipline respondent’s pharmacy technician registration, pursuant to Business and Professions Code section 4301, subdivision (g), in that respondent knowingly signed documents misrepresenting facts regarding his professional credential. (Factual Findings 16 to 28 and 34 to 35.)

FOURTH CAUSE FOR DISCIPLINE: ACTIONS WARRANTING DENIAL OF LICENSURE

6. Cause exists to discipline respondent’s pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (p), in that respondent committed acts warranting denial of licensure by (1) attempting to procure an RN license from the Arizona Nursing Board and the BRN by fraud or misrepresentation; (2) committing substantially related acts of moral turpitude, dishonesty, fraud, deceit, or corruption; and (3) knowingly signing documents that misrepresented facts regarding his professional credential. (Factual Findings 16 to 28 and 34 to 35; Legal Conclusions 3 to 5.)

Rehabilitation/Level of Discipline

7. The Board has issued disciplinary guidelines to assist in determining the discipline of a license. This “Manual of Disciplinary Guidelines and Model Disciplinary Orders” (Rev. 2/2017) (Guidelines) are incorporated by reference at California Code of Regulations, title 16, section 2579.10. Under the Guidelines, acts of moral turpitude, dishonesty, or fraud are Category II violations, where the minimum penalty is revocation stayed and three to five years’ probation. The maximum penalty is revocation. (Guidelines, p. 7.)

8. The Guidelines specify that, in determining whether the minimum, maximum or an intermediate penalty is to be imposed in a given case, the following factors should be considered: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record; (4) prior warnings; (5) number and or variety of current violations; (6) the nature and severity of the act(s) or offense(s), or crime(s); (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 dismissal proceedings pursuant to section 1203.4 of the Penal Code; (13) the time that has elapsed since commission of the act(s) or offenses(s); (14) whether the conduct was intentional or negligent; (15) financial benefit to the respondent from the misconduct; (16) other licenses held by the respondent and license history of those licenses; and (17) Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (*Id.* at p. 3.)

9. In this case, the nature and severity of respondent’s misconduct are undeniably serious. While respondent asserted that he was the unwitting victim of Malone’s scam, his claim is not persuasive. For reasons set forth in Factual Finding 35,

respondent misled IERF, the BRN, and the Arizona Nursing Board by indicating he had attended the University of Belize for four years. Respondent's conduct was intentional, and he would have financially benefited from his misconduct because of the value of a bachelor's degree in nursing. Had respondent succeeded in procuring his registered nurse license, the potential harm to the public would have been great, as respondent's true level of training and competence would not have been established, to the potential detriment of patients or employers. Respondent is also licensed with the LVN Board. However, no evidence was presented that respondent has a prior disciplinary record with either this Board or the LVN Board. There was also no evidence that respondent has any criminal history. Even though respondent's underlying misconduct occurred approximately five to six years ago in 2014 and 2015, four separate causes for discipline have been established against him. In aggravation, respondent was less than cooperative when Investigator Tennyson contacted him to find out more information about INT and Malone.

10. Respondent appears to be a skilled and caring LVN who is a valuable member of the health care team at Monterey Park Hospital. His colleagues, including Nguyen and Hurtado, provided character evidence showing that respondent is well respected at his workplace. However, neither Nguyen nor Hurtado evinced a complete understanding of the magnitude of respondent's wrongdoing, and their character evaluations carried less weight.

11. It is particularly troubling that respondent was less than candid in his testimony at hearing. Respondent continued to insist that he had no knowledge of Malone's fraudulent scheme and that he would have been qualified to be an RN if only he had completed his clinical coursework. He also professed to not understand why the Board would be concerned about his misrepresentations of his professional

credentials. Respondent's lack of candor and failure to acknowledge the potential harm of his actions suggest that he has not accepted personal responsibility for, nor has he gained any insight into, his misconduct. These factors, in their totality, indicate that the protection of public interest, health, and welfare requires the revocation of respondent's registration.

Costs

12. Pursuant to Business and Professions Code section 125.3, complainant is entitled to recover the reasonable costs of prosecution of this matter in the amount of \$6,467.50, as set forth in Factual Finding 42.

13. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Among other things, the licensing agency must consider a respondent's ability to pay. (*Id.* at p. 45.)

14. Respondent offered evidence indicating that he earns approximately \$50,000 per year in wages with overtime and that he bears expenses including property tax, car payments, and grocery, gas, and utility bills. Considering this limited ability to pay, the reasonable costs of recovery should be reduced by half, to \$3,233.75. Respondent's ability to pay costs will be also substantially impacted by the revocation of his registration. Thus, ordering respondent to pay costs at this time, in addition to the revocation of registration, will be unduly punitive. Accordingly,

recovery of costs will be payable only upon reinstatement of respondent's revoked registration.

ORDER

Registration number TCH 19328, issued to respondent Juan Carrillo, is revoked. Respondent shall relinquish his registration, including any indicia of registration issued by the Board, to the Board within 10 days of the effective date of this Decision. Respondent may not reapply or petition the Board for reinstatement of his revoked Registration for three years from the effective date of this decision.

As a condition precedent to reinstatement of his revoked registration, respondent shall reimburse the Board for its costs of prosecution in the amount of \$3,233.75. Said amount shall be paid in full before the reinstatement of his registration unless otherwise ordered by the Board.

DATE: August 21, 2020

DocuSigned by:
Ji-Lan Zang
C57B808FCCC14EC...

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

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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. 6800

13 **JUAN CARRILLO**
8415 San Carlos Avenue
14 South Gate, CA 90280

OAH No. 2019120135

FIRST AMENDED ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **19328**

Respondent.

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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.

22 2. On or about June 5, 1996, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 19328 to Juan Carrillo (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 October 31, 2021, unless renewed.
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4. Section 4300 of the Code states:

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5. Section 4300.1 of the Code states:

STATUTORY PROVISIONS

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...

(JUAN CARRILLO) FIRST AMENDED ACCUSATION

regulatory agency.

(p) Actions or conduct that would have warranted denial of a license.

...

COST RECOVERY

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL ALLEGATIONS

8. On or about April 11, 2014, Respondent applied for a foreign credential evaluation report from Graduates of Foreign Nursing Schools International (CGFNS) claiming that he attended the University of Belize from 2009 to 2013 and obtained a "BNUR" – when in fact, he did not. In support of his application, Respondent submitted fraudulent paperwork to CGFNS, including, but not limited to: a transcript of grades from the University of Belize. Respondent requested the California Board of Registered Nursing and the Arizona State Board of Nursing receive copies of his foreign credential evaluation report.

9. Copies of Respondent's employment records indicate that he was working in a Los Angeles County pharmacy from approximately January 1, 2009 through November 8, 2011 – dates during which Respondent purportedly attended the University of Belize.

10. On October 2, 2014, CGFNS informed Respondent that the University of Belize reported that the transcript submitted to CGFNS was not a valid document. As a result, CGFNS terminated Respondent's rights and privileges within their organization.

11. On October 10, 2014, Respondent again applied for a foreign credential evaluation report, this time from Evaluation for International Education Research Foundation Inc. (IERF) claiming that that he attended the University of Belize from 2009 to 2013 and earned a

1 “B.N.U.R”. In support of his application, Respondent submitted fraudulent paperwork to IERF,
2 including, but not limited to: a diploma from the University of Belize.

3 12. On November 17, 2014, Respondent applied for a California registered nurse license.
4 In the application, Respondent stated, under penalty of perjury, that he had attended the
5 University of Belize from 2009 to 2013 and that he earned a baccalaureate degree. Documents
6 were included in the application, which purported to confirm his attendance and graduation from
7 the University of Belize, including, but not limited to, a diploma from the University of Belize.

8 13. On or about September 2, 2015, Respondent applied to the Arizona State Board of
9 Nursing. Arizona State Board of Nursing records indicate that on January 5, 2016, Respondent
10 failed the National Council Licensure Examination (NCLEX) Exam.

11 14. On May 4, 2016, the Registrar of the University of Belize confirmed to the California
12 Board of Registered Nursing that Respondent had not attended the school and that the educational
13 documents submitted to the Board were falsified.

14 15. On July 1, 2016, the California Board of Registered Nursing denied Respondent’s
15 application for licensure based on false information in his application.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Attempting to Procure Certificate by Fraud or Misrepresentation)**

18 16. Respondent is subject to disciplinary action under Code section 4301, subdivisions
19 (a), in conjunction with subdivision (o), in that Respondent attempted to procure a registered
20 nursing license from the Arizona State Board of Nursing and the California Board of Registered
21 Nursing by fraud or misrepresentation. Complainant refers to and by this reference incorporates
22 the allegations set forth above in paragraphs 8 through 15, inclusive, as though set forth fully.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Act of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

25 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
26 in that Respondent committed substantially related acts of moral turpitude, dishonesty, fraud,
27 deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set
28 forth above in paragraphs 8 through 15, inclusive, as though set forth fully.

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THIRD CAUSE FOR DISCIPLINE

(Knowingly Misrepresenting Facts)

18. Respondent is subject to disciplinary action under Code section 4301, subdivision (g) in that Respondent knowingly signed documents misrepresenting facts regarding his professional credentials. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 8 through 15, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Actions Warranting Denial of License)

19. Respondent is subject to disciplinary action under Code section 4301, subdivision (p) in that Respondent knowingly signed documents misrepresenting facts regarding his professional credentials. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 8 through 15, inclusive, as though set forth fully.

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 19328, issued to Juan Carrillo;
2. Ordering Juan Carrillo, Jr. 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: March 19, 2020



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

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