

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

In the Matter of the Accusation Against:

LAWRENCE KIRK PORCHIA JR., Respondent

Pharmacy Technician Registration No. TCH 156391

Agency Case No. 6815

OAH No. 2020030110

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on January 20, 2021.

It is so ORDERED on December 21, 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.

By

Greg Lippe
Board President

**BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA**

In the Matter of the Accusation against:

LAWRENCE KIRK PORCHIA JR., Respondent

Case No. 6815

OAH No. 2020030110

PROPOSED DECISION

Dena Coggins, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on August 31, 2020, in Sacramento, California.

Lorrie M. Yost, Deputy Attorney General, represented Anne Sodergren (complainant), Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Lawrence Kirk Porchia Jr., (respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 31, 2020.

FACTUAL FINDINGS

1. On August 30, 2016, the Board issued Original Pharmacy Technician Registration Number TCH 156391 (license) to respondent, which allowed respondent to work as a pharmacy technician in California. The license will expire on March 31, 2022, unless renewed or revoked.

2. On January 21, 2020, complainant, acting in her official capacity, filed the Accusation against respondent. The Board seeks to discipline respondent's license based upon a criminal conviction he received in 2019; acts involving moral turpitude, dishonesty, fraud, deceit, or corruption; and violation of laws regulating controlled substances.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

2019 Criminal Conviction

4. On May 22, 2019, respondent, in the Sacramento Superior Court, Case No. 18FE020331, on a plea of nolo contendere, was convicted of violating Penal Code section 30605, subdivision (a), possession of an assault weapon, a misdemeanor. The court ordered respondent to serve 120 days in jail, and that his weapons were to be confiscated and destroyed. The court further prohibited him from knowingly possessing firearms for a period of 10 years, and he was to relinquish all firearms within 24 hours of release. He was placed on three years of informal probation and ordered to pay \$304, in fines and assessments.

5. The circumstances surrounding the crime occurred on June 25, 2018, when respondent possessed an unknown make rifle with folding stock and barrel less than 30 inches.¹

November 2018 Incident

6. On November 2, 2018, Placer County Sheriff Deputy Mikhail Yarmolyuk conducted a traffic stop of respondent's vehicle. Respondent was detained for an outstanding felony arrest warrant after being verbally uncooperative and refusing to step out of the vehicle. The deputy searched respondent's person and found numerous Hydrocodone pills and yellow pills with markings "R039." Respondent had a current prescription for Hydrocodone. When the deputy asked respondent about the yellow pills, respondent first claimed the pills were for anxiety and said he previously had a prescription for them. He then stated he got the anxiety pills from his cousin. Respondent later admitted he obtained the yellow pills without a prescription for anxiety disorder. The deputy conducted research on the yellow pills and presumptively identified them as Alprazolam. Respondent was arrested pursuant to the outstanding felony arrest warrant, and for being in possession of a controlled substance without a valid prescription. No evidence was provided of subsequent testing done to identify the yellow pills.

7. Deputy Yarmolyuk testified at the hearing. He has been employed as a peace officer for over 12 years. His duties include patrolling, responding to radio calls, investigating crimes, and testifying in court. He prepared an incident report of the

¹ An assault weapon includes a semiautomatic, centerfire rifle that has an overall length of less than 30 inches. (Pen. Code, § 30515, subd. (a)(3).)

November 2018 incident on same the day of the incident. His testimony regarding the incident was consistent with his incident report, and he reiterated the facts and circumstances set forth in Finding 6 above. He explained that he conducted internet research to identify the yellow pills then booked the pills into evidence to have them tested by the lab.

8. Jyoti Kaur, a Board inspector, testified at the hearing. Her duties include working as a compliance officer, conducting pharmacy inspections, gathering evidence, and report writing, among other duties. Ms. Kaur has been licensed as a pharmacist in California for eight years. Ms. Kaur has been employed as a pharmacist-in-charge, and is aware of the duties of a pharmacy technician. She explained that pharmacy technicians work under the supervision of a pharmacist. Pharmacy technician tasks include performing non-discretionary tasks; packaging drugs; counting, pouring, and mixing medication; compounding sterile products; cleaning; and sterilizing. She opined that good judgment, honesty, trustworthiness, respect of rules and regulations, and character above reproach are necessary qualities for a pharmacy technician. A pharmacy technician is an important member of the team because the pharmacy technician impacts the well-being of the public.

Respondent's Evidence

9. Respondent provided a written statement, dated January 26, 2020. He claimed the assault weapon was "handed down" to him by his father in 2014. According to respondent, the assault weapon did not work, and he decided to purchase a replacement stock and "modernize the look" before giving the weapon to his father as a retirement gift. Respondent stated, "the gun was non functional [*sic*], no ammo no magazine or clip[,] it was removed from my home on 06/25/2018 when I voluntarily turned it and all my other firearms over to [P]lacer county" Respondent

asserted he purchased the replacement stock from a company that did not indicate or warn that the stock was illegal in California.

10. Regarding the November 2018 traffic-stop incident, respondent wrote:

[T]he Alprazolam recovered from the search were [sic] obtained and removed from a younger sibling who was known to abuse them[.] I obtained them to destroy them, but no excuse they were in my position [sic]. A deal was reached in this matter between myself and courts I was to complete PC1000 which is a drug diversion program which if completed removes and dismisses the case which I completed in April 2019 and remained out of trouble and the matter was concluded Jan 8th 2020 resulting in dismissal no charge nor conviction[.]

11. Respondent also submitted a Certificate of Completion of PC 1000/Drug Diversion from Community Recovery Resources, dated April 10, 2019, and a 12-Step Meeting Attendance Record from Community Recovery Resource with attendance dates between February and April.² Additionally, respondent submitted a Firearm Ownership Report, dated August 9, 2018, for an M1 firearm and a June 7, 2019, Law Enforcement Gun Release for the same firearm.

12. Respondent testified at the hearing. Regarding the possession of assault weapon conviction, respondent claimed he was advised not to proceed to trial,

² The year of attendance is not provided on the attendance record, but a reasonable inference can be made that respondent attended those meetings in 2019.

because the trial would be prolonged; instead, he accepted a plea deal. Regarding the yellow pills found by law enforcement during the November 2018 incident, respondent asserted there was “no definitive evidence” marking them as Alprazolam and no lab results were provided to identify the pills. Respondent claimed he lied to the deputy when he said he received the yellow pills from a cousin. Instead, respondent was trying to protect his younger brother, who was on probation. According to respondent, he took the yellow pills from his younger brother in order to destroy them. Respondent testified that he was “unsure” of what the yellow pills were, but could not explain why he would be concerned his brother had pills if he was unsure of what they were.

13. Respondent served time in jail for his criminal conviction and is currently on criminal probation. He is making payments on his conviction-related court fines and assessments.

Analysis

14. Pharmacists and intern pharmacists exercise critical vigilance and control over medication stocks, drug inventories, and quality assurance protocols. Pharmacy technicians provide crucial assistance to pharmacists and intern pharmacists in all of their pharmacy tasks. Therefore, a pharmacy technician’s work is important to the safety of the public, and the pharmacy technician must exercise good judgment and honesty in his tasks.

15. Complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct when he was convicted in May 2019, for possession of an assault weapon. Respondent attempted to mitigate his conduct by claiming he was unaware that modifying the weapon would make it an assault weapon. Yet, respondent’s plea is conclusive evidence of guilt for the purpose of

imposing administrative discipline or denial of licensure. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 449 [proof of a conviction “stands as conclusive evidence of [his] guilt of the offense charged.”].) Additionally, respondent’s crime was an act involving moral turpitude. (*People v. Gabriel* (2012) 206 Cal.App.4th 450, 456-59 [“[A]ssault firearms are also typically used to commit crimes, and as the Legislature has outlined, cause greater harm to the public than general firearms, and thus possession of same should be considered a crime of moral turpitude”].) The potential harm of possessing an assault weapon is substantial.

16. The evidence further established respondent was engaged in unprofessional conduct when he unlawfully possessed the controlled substance Alprazolam, a Schedule IV medication. (21 U.S.C. § 812; 21 C.F.R. §§ 1308.01, 1308.14.) Despite making various conflicting statements about the incident both at hearing and beforehand, respondent admitted to this conduct.

17. Respondent is complying with the terms and conditions of his criminal probation, but will remain on probation until May 2022. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes . . . while on probation or parole.”] Here, respondent has not had sufficient time to establish substantial rehabilitation, as only two years have passed since his criminal conduct resulting in his criminal conviction, and less than two years have passed since he possessed the controlled substance Alprazolam without a prescription. A truer indication of rehabilitation is demonstrated by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

18. Respondent offered substantial mitigating evidence. He has not been previously disciplined by the Board. He successfully completed the PC 1000 Drug Diversion program, which he asserts resulted in a dismissal of the charge relating to his November 2018 possession of Alprazolam. He provided evidence of participation in support groups as part of the Drug Diversion program. Although he attempted to minimize his culpability relating to both his criminal conviction and the November 2018 incident, he did appreciate the seriousness of his misconduct.

19. Overall, respondent's conduct was concerning and his attempts to distance himself from culpability shows a lack of insight into his wrongdoing. However, substantial mitigating evidence indicates that allowing respondent an opportunity to retain his license on a probationary basis, subject to terms and conditions, will ensure the public health, safety, and welfare are well protected.

Costs for Investigation and Enforcement

20. 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 enforcement of a case. At hearing, complainant submitted Ms. Yost's Certification of Prosecution Costs: Declaration of Lorrie M. Yost and a Matter Time Activity report. The Matter Time Activity report states the hours worked by attorneys and paralegals between 2019 and 2020 on this matter, and provided a total amount billed for attorneys' fees of \$13,805 (62.75 hours billed) and paralegal fees of \$615 (3 hours billed); a total of \$14,420. The Matter Time Activity report specifies the tasks performed, time spent on each task, who completed specific tasks, the date the tasks were completed, and the amount billed for each task. Additionally, Ms. Yost's declaration provided a good faith estimate that two additional hours, in the amount of \$440, were or would be incurred or billed to the Board for the further preparation of

the case up to the commencement of the hearing. The total enforcement costs to be billed to the Board in this matter is \$14,860.

21. Complainant submitted the Board's Certification of Costs of Investigation by Agency Executive in Case No. 6815. As of August 19, 2020, the Board incurred \$304 in investigative costs. The supporting documentation provided a summary of the actual costs incurred and accompanying receipt, requisition, and billing sheet.

22. As set forth in Legal Conclusions 9 and 10, the evidence established that the investigation costs are reasonable. However, the enforcement costs recoverable in this matter are reduced to \$3,520.

LEGAL CONCLUSIONS

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.) Complainant must meet this burden of proof for each cause for discipline alleged in the Accusation.

2. Pursuant to Business and Professions Code section 4301, the Board shall take action against a license holder who is guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

(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 United States regulating controlled substances and dangerous drugs.

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. . . .

3. Possession of an assault weapon is considered a crime of moral turpitude. (*People v. Gabriel, supra*, 206 Cal.App.4th at 457 [“The mere possession of such weapons demonstrates a readiness to do evil”].)

4. Business and Professions code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

[¶] . . . [¶]

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

5. As set forth in Factual Findings 4, 5, and 17, respondent was convicted of possession of an assault weapon in May 2019. A crime is "substantially related to the qualifications, functions or duties of a . . . registrant if to a substantial degree it evidences present or potential unfitness . . . to perform the functions authorized by [his] . . . registration in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770.) Respondent's crime is substantially related to the qualifications, functions, or duties of a pharmacy technician because pharmacy

technicians must follow rules and laws while performing their duties, and respondent's failure to follow the law relating to assault weapons demonstrates a failure to comply with rules and laws. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (l) and 490.

6. Unprofessional conduct also includes "any act involving moral turpitude, dishonesty, fraud, deceit, or corruption." (Bus. & Prof. Code, § 4301, subd. (f).) When respondent unlawfully possessed an assault weapon, he committed an act "involving moral turpitude, dishonesty, fraud, deceit, or corruption." Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (f).

7. Unprofessional conduct also includes the violation of any state or federal law regulating controlled substances. (Bus. & Prof. Code, § 4301, subd. (j).) As set forth in Factual Findings 6 through 8, and 10, respondent admitted to possessing the controlled substance Alprazolam without a valid prescription, in violation of Health and Safety Code section 11350. Therefore, cause exists to discipline his license pursuant to Business and Professions Code section 4301, subdivision (j).

8. Business and Professions Code section 125.3 states, in pertinent part, that the Board may request the ALJ to direct a licensee found to have committed a violation(s) of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. As set forth in Factual Findings 22 and 23, the Board seeks reimbursement for its investigative and enforcement costs. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Court identified the factors to be considered in determining the reasonableness of costs pursuant to statutory

provisions like Business and Professions Code section 125.3. The 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 his or 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 to the alleged misconduct.

10. Here, respondent was not successful in getting the charges dismissed or reduced; he did not display a subjective good faith belief in the merits of his position, as he did not contest his conviction or that he had in his possession a medication that was not prescribed to him. Also, he did not raise a colorable challenge to the proposed discipline and did not dispute his financial ability to pay the costs incurred in investigating and enforcing this matter. Moreover, the scope of the investigation, as related to the incurred investigation costs, was appropriate to the alleged misconduct. However, the scope of the enforcement was not appropriate to the alleged misconduct. The amount of time spent to enforce this matter was not proportional to the complexity of the case. There were two witnesses that provided brief testimonies. The allegations were not generally contested and respondent was the only person to testify in his case, with only a brief cross-examination by complainant. The prosecution of this matter was mostly conducted through documentary evidence, which was not voluminous. Therefore, the investigation costs are reduced from \$14,860 to \$3,520. Under all of the facts and circumstances and considering the Board's obligation to protect the public through licensing actions such as this one, assessment of investigation and enforcement costs in the amount of \$3,824 is reasonable, which is \$304 for enforcement costs, and \$3,520 for investigation costs.

ORDER

Original Pharmacy Technician Registration Number TCH 156391, issued to respondent Lawrence Kirk Porchia Jr., is revoked; however, the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws.
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment.
- a conviction of any crime.
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the

terms and conditions of his probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of this decision, and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a)

his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read this decision, and the terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case this matter, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of this decision, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$3,824, within 30 days of the effective date of this decision.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

Respondent shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician registration with the board, including any period during which suspension or probation is tolled.

Failure to maintain an active, current pharmacy technician registration shall be considered a violation of probation.

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

11. Certification Prior to Resuming Work

Respondent shall be suspended, and shall not work as a pharmacy technician, until he has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that he may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be considered a violation of probation.

12. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

13. Violation of Probation

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry

out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.


14. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

15. Criminal Probation/Parole Reports

Within ten (10) days of the effective date of this decision, or within ten (10) days of the issuance or assignment/replacement of same, whichever is earlier, respondent shall provide the board or its designee in writing: a copy of the conditions of any criminal probation/parole applicable to respondent; and the name and contact information of any probation, parole or similar supervisory officer assigned to respondent. Respondent shall provide a copy of all criminal probation/parole reports to the board within ten (10) days after such report is issued. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

DATE: September 29, 2020

DocuSigned by:

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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 6815

13 **LAWRENCE KIRK PORCHIA JR.**
14 **7723 Pompei Court**
Citrus Heights, CA 95621

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **156391**

17 Respondent.

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19 **PARTIES**

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

23 2. On or about August 30, 2016, the Board issued Pharmacy Technician License
24 Number TCH 156391 to Lawrence Kirk Porchia Jr. (Respondent). The license was in full force
25 and effect at all times relevant to the charges brought herein and will expire on March 31, 2020,
26 unless renewed.

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3. Business and Professions Code (“Code”) section 4300 provides, in pertinent part, that

4. Code section 4300.1 states:

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

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5. Code section 4301 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 includes, 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.

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

6. Code section 490 provides:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

1 (b) Notwithstanding any other provision of law, a board may exercise any
2 authority to discipline a licensee for conviction of a crime that is independent of the
3 authority granted under subdivision (a) only if the crime is substantially related to the
4 qualifications, functions, or duties of the business or profession for which the
5 licensee's license was issued.

6 (c) A conviction within the meaning of this section means a plea or verdict of
7 guilty or a conviction following a plea of nolo contendere. An action that a board is
8 permitted to take following the establishment of a conviction may be taken when the
9 time for appeal has elapsed, or the judgment of conviction has been affirmed on
10 appeal, or when an order granting probation is made suspending the imposition of
11 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

12 (d) The Legislature hereby finds and declares that the application of this
13 section has been made unclear by the holding in *Petropoulos v. Department of Real*
14 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
15 significant number of statutes and regulations in question, resulting in potential harm
16 to the consumers of California from licensees who have been convicted of crimes.
17 Therefore, the Legislature finds and declares that this section establishes an
18 independent basis for a board to impose discipline upon a licensee, and that the
19 amendments to this section made by Chapter 33 of the Statutes of 2008 do not
20 constitute a change to, but rather are declaratory of, existing law.

21 **COST RECOVERY**

22 7. Code section 125.3 provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 **FIRST CAUSE FOR DISCIPLINE**

27 **(Conviction of a Crime)**

28 8. Respondent is subject to discipline pursuant to Code sections 4301(l) and 490, on the
grounds of unprofessional conduct, in that on or about May 22, 2019, in the case of *People v.*
Lawrence Kirk Porchia, (Super. Ct. Sacramento County, 2018, Case No. 18FE020331),
Respondent was convicted by the Court on his plea of nolo contendere of violating Penal Code
section 30605(a) (possession of an assault weapon), a misdemeanor. The circumstances of the
crime were that on or about June 25, 2018, Respondent willfully and unlawfully possessed an
assault weapon, to wit: an unknown make rifle with a folding stock and barrel less than 30 inches.
The crime is substantially related to the qualifications, functions, or duties of a pharmacy
technician.

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1 **SECOND CAUSE FOR DISCIPLINE**

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

3 9. Respondent is subject to discipline for unprofessional conduct pursuant to section
4 4301(f), in that he committed acts involving moral turpitude, dishonesty, fraud, deceit or
5 corruption, by unlawfully possessing an assault weapon, as set forth above in paragraph 8.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Violation of Laws Regulating Controlled Substances)**

8 10. Respondent is subject to discipline for unprofessional conduct pursuant to section
9 4301(j), in that he violated Health and Safety Code section 11350 by unlawfully possessing the
10 controlled substance Alprazolam. The circumstances are that on or about November 2, 2018,
11 Respondent was pulled over by a Placer County Sheriff's Deputy for speeding. A search of
12 Respondent's person revealed that he had on him numerous yellow pills marked with "R039".
13 Further inquiry revealed that the pills were Alprazolam, a Schedule IV medication prescribed for
14 anxiety, and that Respondent had obtained them without the benefit of a prescription.

15 **PRAYER**

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

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 156391,
19 issued to Lawrence Kirk Porchia Jr.;

20 2. Ordering Lawrence Kirk Porchia Jr. to pay the Board of Pharmacy the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3; and,

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

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3 DATED: January 21, 2020



4 ANNE SODERGREN
5 Interim Executive Officer
6 Board of Pharmacy
7 Department of Consumer Affairs
8 State of California
9 *Complainant*

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