

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

In the Matter of the Accusation Against:

RAGINA DIANE PERRYMAN, Respondent

Pharmacy Technician Registration No. TCH 13941

Agency Case No. 6827

OAH No. 2020050167

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 February 4, 2021.

It is so ORDERED on January 5, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephone conference on October 5, 2020, from Sacramento, California.

Joshua B. Eisenberg, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Ragina Diane Perryman (respondent) represented herself.

Evidence was received and the record held open until October 19, 2020, to allow respondent to submit additional evidence. On October 12, 2020, complainant's counsel, as a courtesy only, filed respondent's Exhibits A through D. That same day, complainant also filed a response to respondent's Exhibits A through D, marked for

identification as Exhibit 16, indicating that complainant had no objection to admission of respondent's Exhibits A through D. Consequently, on October 19, 2020, Exhibits 16 and A through D were admitted, the record closed, and the matter submitted for decision.

FACTUAL FINDINGS

Complainant's Evidence

THE REGISTRATION

1. On September 7, 1994, the Board issued respondent Pharmacy Technician Registration Number TCH 13941 (registration). The registration will expire on May 31, 2022, unless renewed or revoked.

APRIL 4, 2018 INCIDENT

2. On April 4, 2018, respondent was employed as a pharmacy technician at the inpatient pharmacy of Mercy Medical Center Merced (Mercy) in Merced, California. That day, respondent was scheduled to work a 1:30 p.m. to 10:00 p.m. shift. Respondent arrived a few minutes prior to the start of her shift, wearing her uniform and employee badge. She appeared shaky and disoriented, was not walking straight, and complained of dizziness. She never officially "clocked in" for work and was taken to Mercy's Emergency Department (ED) for evaluation. Laboratory testing from that evaluation revealed that respondent had a blood alcohol concentration (BAC) of 0.225 percent. After treatment in the ED, she was sent home.

3. Subsequently, Mercy's Human Resources Department conducted an investigation of the April 4, 2018 incident. On October 1, 2018, prior to conclusion of that investigation, respondent resigned her position at Mercy.

THE BOARD COMPLAINT

4. On April 9, 2018, Brian Elmore, Pharmacist in Charge (PIC) at Mercy filed a complaint with the Board regarding respondent's impairment on April 4, 2018. A Board investigation ensued.

THE ACCUSATION

5. On February 28, 2020, complainant, in her official capacity, filed an Accusation alleging cause for discipline based on respondent's dangerous use of alcohol on April 4, 2018. Additionally, the Accusation seeks an award of the Board's reasonable investigation and enforcement costs.

6. Respondent timely filed a Notice of Defense. Thereafter, 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.

TESTIMONY OF PIC BRIAN ELMORE

7. PIC Elmore is a Board-licensed pharmacist and has been the Director of Pharmacy at Mercy for over 18 years. The Mercy pharmacy is closed to the public and only serves patients admitted to the hospital or who are receiving care at one of Mercy's outpatient facilities.

8. PIC Elmore has known respondent for many years through her work as a pharmacy technician at Mercy. Her duties included preparing and delivering medication, including intravenous (IV) medication.

9. PIC Elmore had previously counseled respondent about her attendance, and they discussed the anxiety and stress she experienced due to issues in her personal life. However, she never displayed any signs of inebriation at work prior to April 4, 2018. Mercy's policies require employees to report for work fit to perform their jobs and prohibit any work while impaired. The risks of an impaired pharmacy technician would include improper preparation of medication, which could risk the health and safety of a patient.

TESTIMONY OF BOARD INSPECTOR

10. Denise Dukatz has been a Board inspector for approximately six years. She has also been a Board-licensed pharmacist since 1994. In her work as a Board inspector, she has conducted numerous inspections and investigations at inpatient hospital pharmacies and is familiar with their operations.

11. A pharmacy technician at an inpatient hospital pharmacy frequently prepares between 100 and 200 doses of sterile IV medication per shift. To prepare the IVs, the technician must pull the medication and then manipulate syringes with very fine measurements to measure the correct dosage. Thus, the work requires good focus, accuracy, fine motor skills, and judgment, and an impaired pharmacy technician cannot safely perform such work. Although a pharmacist usually checks the medication before it is dispensed, any error along the preparation process presents a substantial risk to patient health and safety.

Respondent's Evidence

12. Respondent testified at hearing. Originally from Hayward, California, respondent completed her pharmacy technician education at Western Career College. After obtaining her Board registration, she moved to Merced and started working two jobs: (1) as a Mercy pharmacy technician; and (2) working at the registration desk of an emergency room. She was working "crazy hours," raising her children, and taking care of her mother who suffered from dementia, which all led to significant stress and anxiety. Respondent turned to alcohol to cope with her stress/anxiety and became a "habitual drinker" by 2017. She would drink at night to help calm herself down.

13. Around the time of the April 4, 2018 incident, respondent was also having a "rough time at home" and was staying at her father's house. Respondent testified that, on the evening of April 3, 2018, she had a couple of drinks, but "not that much"; just two cans of Long Island iced tea. She had taken Zofran¹ earlier that day and was also on Xanax.² She went to bed at 9:00 p.m. and consumed no further alcohol prior to reporting for work the next day.

14. On April 4, 2018, respondent woke up around 5:00 a.m., drank a shake, and "felt fine" for most of the morning. Around the time she got ready for work, she started feeling "off," but at that point it was too late to "call in to work." Respondent drove to work and arrived about 15 minutes prior to the start of her 1:30 p.m. shift.

¹ Zofran, or ondansetron, is a drug used to treat nausea and vomiting.

² Xanax, or alprazolam, is a benzodiazepine used to treat anxiety and panic disorder.

She felt very lightheaded, queasy, nauseous, and stressed, and she “knew her mind was not there.” Although she wore her uniform and employee badge, she never “clocked in” and “went straight to” the on-duty pharmacist. Concerned pharmacy staff then assisted her to the ED for evaluation. Respondent did not realize she was impaired by alcohol until the ED doctor told her she was drunk with a very high BAC. She believed she was coherent, but just dizzy.

15. Respondent acknowledges that she made a mistake by showing up to work on April 4, 2018, but notes that she also did the right thing by not actually starting work. She recognizes that pharmacy technicians perform an important job and that she needed all her faculties to perform her work safely.

16. Between May 1, 2018 and October 24, 2018, respondent attended eight therapy sessions with Amy Velasquez, Psy.D, LMFT, LPCC, to address respondent’s anxiety and substance abuse. The sessions were provided by Mercy’s Employee Assistance Program (EAP).

17. On May 5, 2019, respondent voluntarily checked into The Rose Julia Riordan Tranquility Village, a residential alcohol treatment program, where she stayed until June 17, 2019. Treatment at the program included various substance abuse classes, talking about problems and feelings, and reading Alcoholics Anonymous (AA) books and materials.

18. After respondent left the residential program, she transitioned to outpatient therapy at Merced County Behavioral Health and Recovery Services. By October 16, 2019, she also completed 12 sessions of “From the Inside-Out Taking Responsibility for the Relationships in Your Life.” Respondent continued to attend

treatment there until the beginning of 2020, when her mother passed away and she had difficulty affording further therapy due to unemployment.

19. Respondent relapsed at the beginning of 2020, due to the stress and grief resulting from her mother's passing. At the time of the October 2020 hearing, respondent had approximately seven to eight months of sobriety, except for some Nyquil³ she had consumed the week prior. She does not have specific triggers, but mainly used alcohol in the past to relax. Her stress and anxiety are now better controlled with medication prescribed by her doctor. Although she still enjoys the idea of drinking alcohol, she instead drinks a lot of tea and tries not to think about alcohol.

20. Respondent attends AA meetings only sporadically. She explained that her ability to attend AA meetings has been further hampered by the COVID-19 pandemic, because she is not "computer savvy enough" to attend virtual meetings and "can barely use [her] phone."

21. Respondent identified her support system as her church and women from the residential rehabilitation program she attended, whom she calls whenever she has the urge to drink. They try to uplift each other and talk about scriptures.

22. Approximately two weeks prior to the hearing, respondent obtained employment as a pharmacy technician at a Raley's outpatient pharmacy in Merced. Her employer is not aware of these proceedings. Respondent earns \$16.50 per hour

³ Nyquil is an over-the-counter medication that treats nighttime cold and flu symptoms. Depending on the formulation, Nyquil can contain up to 10 percent alcohol.

and only works three days a week. Her husband is unemployed, and she is the sole income provider for their household.

23. Respondent understands why the Board would be concerned about her ability to safely practice given the April 4, 2018 incident. She “would do anything” to keep her registration and is willing to comply with any probationary terms the Board deems appropriate.

Analysis

CAUSE FOR DISCIPLINE

24. Respondent used alcohol in a manner dangerous to herself and the public. First, she drove to work with a very high BAC of 0.225 percent, almost three times the legal limit for driving. Second, although she never formally started her shift at Mercy, she arrived wearing her uniform and employee badge, demonstrating at least an initial intent to work. The work of a pharmacy technician requires good focus, accuracy, fine motor skills, and judgment, and an impaired individual cannot safely perform such work. Consequently, respondent’s actions on April 4, 2018 put herself and the public at great risk of harm, and constituted unprofessional conduct.

APPROPRIATE DISCIPLINE

25. The Board has promulgated Disciplinary Guidelines (Rev. 2/2017) for use in disciplinary matters. To determine the appropriate degree of discipline, the Disciplinary Guidelines direct consideration of factors including the following: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record, including level of compliance with disciplinary order(s); (4) prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of

admonishment, and/or correction notice(s); (5) number and/or variety of current violations; (6) nature and severity of the act(s), offense(s) or crime(s) under consideration; (7) aggravating evidence; (8) mitigating evidence; (9) rehabilitation evidence; (10) compliance with terms of any criminal sentence, parole, or probation; (11) overall criminal record; (12) if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code; (13) time passed since the act(s) or offense(s); (14) whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; (15) financial benefit to the respondent from the misconduct; (16) other licenses held by the respondent and license history of those licenses; and (17) Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

26. Respondent's unprofessional conduct was extremely serious, because she intentionally placed herself and the public at substantial risk of harm by virtue of her alcohol use. To her credit, respondent has no prior history of Board discipline and has taken some steps towards rehabilitation by entering a rehabilitation program and participating in therapy. Nevertheless, the record also raises several concerns regarding the lasting impact of respondent's rehabilitative efforts.

As an initial matter, respondent's testimony concerning the April 4, 2018 incident was not fully credible. For example, her account that she only consumed two alcoholic beverages prior to 9:00 p.m. on April 3, 2018, but nonetheless had a BAC of 0.225 after 1:30 p.m. on April 4, 2018, strains credulity. Such an attempt to minimize responsibility strongly counsels against a finding of meaningful rehabilitation. (*Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940 ["Fully

acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation"[.])

Furthermore, despite her prior participation in a rehabilitation program and therapy, respondent recently relapsed and has less than one year of sobriety. Additionally, respondent has only made sparse efforts to maintain her sobriety since that relapse. She does not participate in continued therapy, nor does she attend AA on a regular basis. She was unable to articulate a concrete relapse prevention plan and lacks an adequate support system. Indeed, her testimony demonstrated a profound lack of insight into substance abuse, as well as the treatment and tools necessary to properly address it.

27. In sum, the weight of the evidence shows that respondent is not sufficiently rehabilitated at this time. Revocation of her registration is necessary to protect public health, safety, and welfare.

COSTS

28. The Board may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, §125.3, subd. (a).)⁴ Complainant incurred \$3,509 in investigation costs, as documented in a Certification of Investigation Costs, and \$4,557.50 in enforcement costs, as documented in a Certification of Prosecution Costs. The Certifications describe the general tasks performed, the time spent on each task,

⁴ All further statutory references are to the Business and Professions Code, unless otherwise specified.

and the method of calculating the costs. Complainant's total requested investigation and enforcement costs of \$8,066.50 are supported by the records and reasonable.

29. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

30. Here, respondent was not successful in getting charges dismissed or reduced; she raised no colorable challenge to the proposed discipline; and the scope of the investigation was appropriate. However, respondent is currently the sole source of income for her household, only works part-time, and is likely to lose that employment upon revocation of her registration. Consequently, it is appropriate to reduce the cost recovery award by approximately 50 percent to \$4,000.

LEGAL CONCLUSIONS

1. "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (§ 4001.1.)

Burden and Standard of Proof

2. Complainant bears the burden of proving by clear and convincing evidence that respondent's registration is subject to discipline. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires a finding of high probability, or proof that is so clear as to leave no substantial doubt, sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Cause for Discipline

3. "The board shall take action against any holder of a license who is guilty of unprofessional conduct" which includes "the use of . . . alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license." (§ 4301, subd. (h).) Based on the Factual Findings as a whole, and specifically, Factual Finding 24, respondent used alcohol in a manner dangerous to herself and the public when she drove and reported to work impaired on April 4, 2018, which constituted unprofessional conduct. Consequently, cause exists to discipline her registration pursuant to section 4301, subdivision (h).

Appropriate Discipline

4. Based on the Factual Findings as a whole, and specifically, Factual Findings 25 through 27, the appropriate discipline is revocation of respondent's registration. Revocation is necessary to protect public health, safety, and welfare.

Costs

5. The Board may recover its reasonable investigation and enforcement costs of a case. (§ 125.3, subd. (a).) Based on Factual Findings 28 through 30, investigation and enforcement costs of \$4,000 are awarded.

ORDER

1. Pharmacy Technician Registration Number TCH 13941, issued to respondent Ragina Diane Perryman, is REVOKED.
2. Respondent shall relinquish her registration, including any indicia of registration issued by the Board, to the Board within 10 days of the effective date of this decision.
3. Respondent may not reapply or petition the Board for reinstatement of her revoked registration for three years from the effective date of this decision.
4. As a condition precedent to reinstatement of her revoked registration, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$4,000. That amount shall be paid in full prior to the reinstatement of her registration unless otherwise ordered by the Board.

DATE: November 17, 2020

Wim van Rooyen

Wim van Rooyen (Nov 17, 2020 10:38 PST)

WIM VAN ROOYEN

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. 6827

13 **RAGINA DIANE PERRYMAN**
14 **404 Occidental Court**
Merced, CA 95348

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **13941**

17 Respondent.

18
19 **PARTIES**

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

22 2. On or about September 7, 1994, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 13941 to Ragina Diane Perryman (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on May 31, 2020, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a), of the Code states, "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code states:

14 The board shall take action against any holder of a license who is guilty of
15 unprofessional conduct or whose license has been issued by mistake. Unprofessional
16 conduct shall include, but is not limited to, any of the following:

16 ...

17 (h) The administering to oneself, of any controlled substance, or the use of any
18 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
19 or injurious to oneself, to a person holding a license under this chapter, or to any other
20 person or to the public, or to the extent that the use impairs the ability of the person to
21 conduct with safety to the public the practice authorized by the license.

20 ...

21 **COST RECOVERY**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

3 8. Respondent has subjected her registration to disciplinary action under Code section
4 4301, subdivision (h), for unprofessional conduct in that she used alcoholic beverages to an extent
5 or in a manner that was dangerous and injurious to herself, and the public, when she reported to
6 work while impaired by alcohol. The circumstances are as follows:

7 a. On or about April 10, 2018, the Board received a letter from the Pharmacist-in-
8 Charge of Mercy Medical Center Merced (Mercy) stating that on or about April 4, 2018,
9 Respondent arrived impaired to work.

10 b. The Board conducted an investigation which revealed that on or about April 4,
11 2018, while Respondent was employed as a pharmacy technician at Mercy, she displayed signs
12 and behaviors of impairment while on duty. Specifically, Respondent arrived for her shift and
13 complained of feeling dizzy. Respondent's coworkers noted that she looked pale and disoriented.
14 Respondent was taken to the Emergency Department for evaluation as staff pharmacists felt that,
15 based on Respondent's behavior, she was not fit for duty. Respondent's blood work tested
16 positive for alcohol, showing an ethanol level of 225 mg/dL. Following treatment, Respondent
17 was discharged and sent home. The HR director contacted Respondent and placed her on
18 suspension pending further investigation.

19 c. Mercy's Human Resources (HR) department initiated an investigation into the
20 event. During an interview with HR, Respondent acknowledged that she had consumed alcohol
21 the night before work and that the Emergency Department had determined she was drunk based
22 on her elevated blood alcohol levels. Prior to the completion of Mercy's internal investigation,
23 Respondent requested a leave of absence and never returned to work. On or about October 1,
24 2018, Respondent submitted her official resignation.

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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 License Number TCH 13941, issued to Ragina Diane Perryman;

2. Ordering Ragina Diane Perryman 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: February 28, 2020



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

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