

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 6893

13 **MELINDA ZAPIEN**
14 **8812 Lamar Street**
Spring Valley, CA 91977

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician Registration No. TCH**
16 **165698**

[Gov. Code, §11520]

17 Respondent.
18

19 **FINDINGS OF FACT**

20 1. On or about March 19, 2020, Complainant Anne Sodergren, in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
22 Accusation No. 6893 against Melinda Zapien (Respondent) before the Board of Pharmacy.
23 (Accusation attached as Exhibit A.)

24 2. On or about March 26, 2018, the Board of Pharmacy (Board) issued Pharmacy
25 Technician Registration No. TCH 165698 to Respondent. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 6893
27 and expired on January 31, 2020. This lapse in licensure, however, pursuant to Business and
28

1 Professions Code sections 118(b) and 4300.1 does not deprive the Board of its authority to
2 institute or continue this disciplinary proceeding.

3 3. On or about March 20, 2020, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 6893, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of
8 record was and is: 8812 Lamar Street, Spring Valley, CA 91977.

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

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

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

17 6. The Board takes official notice of its records and the fact that Respondent failed to
18 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
19 waived her right to a hearing on the merits of Accusation No. 6893.

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

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
28 as well as taking official notice of all the investigatory reports, exhibits and statements contained
therein on file at the Board's offices regarding the allegations contained in Accusation No. 6893,
finds that the charges and allegations in Accusation No. 6893, are separately and severally, found
to be true and correct by clear and convincing evidence.

1 9. The Board finds that the actual costs for Investigation and Enforcement are \$3,342.00
2 as of May 1, 2020.

3 **DETERMINATION OF ISSUES**

4 1. Based on the foregoing findings of fact, Respondent Melinda Zapien has subjected
5 her Pharmacy Technician Registration No. TCH 165698 to discipline.

6 2. The agency has jurisdiction to adjudicate this case by default.

7 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
8 Registration based upon the following violations alleged in the Accusation which are supported
9 by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

10 a. Respondent violated Business and Professions Code section 4301, subdivision (h), for
11 unprofessional conduct, in that she unlawfully self-administered controlled substances in a
12 dangerous manner.

13 b. Respondent violated Business and Professions Code section 4301, subdivision (j), for
14 unprofessional conduct, in that she knowingly violated Business and Professions Code sections
15 4059 and 4060; Health and Safety Code section 11170.

16 **ORDER**

17 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 165698, issued to
18 Respondent Melinda Zapien, is revoked.

19 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
20 written motion requesting that the Decision be vacated and stating the grounds relied on within
21 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
22 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

23 This Decision shall become effective at 5:00 p.m. on July 29, 2020.

24 It is so ORDERED on June 29, 2020.

25 FOR THE BOARD OF PHARMACY
26 DEPARTMENT OF CONSUMER AFFAIRS

27 By



28 Greg Lippe
 Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9441
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 6893

14 **MELINDA ZAPIEN**
15 **8812 Lamar Street**
Spring Valley, CA 91977

ACCUSATION

16 **Pharmacy Technician Registration No. TCH**
17 **165698**

Respondent.

18
19
20 **PARTIES**

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

23 2. On or about March 26, 2018, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 165698 to Melinda Zapien (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on January 31, 2020, unless renewed.

27 ///

28 ///

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

4. Code section 4300, subdivision (a), states: “Every licensed issued may be suspended or revoked.”

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.

12

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

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

7. Code section 4059 states, in pertinent part, that a person may not furnish any dangerous drug or any dangerous device, except upon the prescription of a physician, dentist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any

controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

9. Code section 4301 states:

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:

...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or 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.

...

(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.

....

10. Health and Safety Code section 11170 states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

11. Health and Safety Code section 11350, subdivision (a), provides that any person who possess a controlled substance that is not obtained upon a written prescription by an authorized prescriber shall be punished by imprisonment.

COST RECOVERY

12. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

///

///

1 **DRUG**

2 13. Methamphetamine is a controlled substance pursuant to Health and Safety Code
3 section 11055(d) and a dangerous drug pursuant to Business and Professions Code section 4022.

4 **FACTUAL ALLEGATIONS**

5 14. On or about June 6, 2019, the Board received notification from Respondent's
6 employer, Rite Aid Corporation, that Respondent was terminated from her employment as a
7 pharmacy technician at Rite Aid Pharmacy for violation of company policies. The facts and
8 circumstances are as follows: Beginning in or around December 2018, Respondent's colleagues
9 noticed a change in her behavior. On March 6, 2019, Respondent appeared unwell, causing her
10 employer to contact an ambulance for her. On May 9, 2019, Respondent came to her supervisor
11 and informed him that she had a drug dependency problem. Respondent was placed on
12 suspension and was asked to undergo drug testing. Respondent told her supervisor that she would
13 test positive. Respondent submitted to the drug screening on May 10, 2019, and she tested
14 positive for amphetamine, methamphetamine. Respondent was asked to enroll in a rehabilitation
15 program but she never returned to Rite Aid and did not respond to calls.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of Controlled Substances)**

18 15. Respondent has subjected her registration to disciplinary action under Code section
19 4301, subdivision (h), for unprofessional conduct, in that she unlawfully self-administered
20 controlled substances in a dangerous manner, as more fully set forth in paragraph 14, above,
21 which is incorporated herein by reference.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Violation of State and Federal Laws Governing Controlled Substances**
24 **and Dangerous Drugs)**

25 16. Respondent has subjected her registration to disciplinary action under Code section
26 4301, subdivision (j), for unprofessional conduct, in that she knowingly violated Business and
27 Professions Code sections 4059 and 4060; Health and Safety Code section 11170, as more fully
28 set forth in paragraph 14, above, which are incorporated herein by reference.

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 165698, issued to Melinda Zapien;
2. Ordering Melinda Zapien 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

SD2020700107
72167883