

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

In the Matter of the Accusation Against:

**DENISE ELAINE RAYOS, Respondent
Pharmacy Technician Registration No. TCH 83569,**

Respondent.

Agency No. 6910

OAH No. 2020070760

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 June 9, 2021.

It is so ORDERED on May 10, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name.

By

Greg Lippe
Board President

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

In the Matter of the Accusation Against:

**DENISE ELAINE RAYOS,
Pharmacy Technician Registration No. TCH 83569,
Respondent.**

Agency No. 6910

OAH No. 2020070760

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by video conference on January 12, 2021.

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

Respondent Denise Elaine Rayos (Respondent) appeared on her own behalf.

Testimony and documentary evidence were received. The record was kept open until February 2, 2021, to allow Respondent to file character references and additional

rehabilitation documents and for Complainant to file objections to Respondent's submissions. Because Complainant was not served with all of Respondent's documents in a timely manner, the ALJ reopened and closed the record on February 3, 2021, to allow Complainant to file a response to the documents served late.

Respondent filed the following documents: a letter dated June 6, 2008, from Martin Torres, Director of Pharmacy at Adventist Health, marked as Exhibit A; an undated letter from Jessica Ciridon, a pharmacist at Kaiser Permanente, marked as Exhibit B; a performance evaluation from Walgreens, marked as Exhibit C; an information sheet from ART Reproductive Center, Inc., along with a Co-Parenting Agreement, marked as Exhibit D; a character letter, dated January 24, 2021, from Andrea Ibarra, marked as Exhibit E; proof of an April 15, 2019 dismissal of a February 15, 2017 California Highway Patrol violation, marked as Exhibit F; an undated character letter from William Sanchez, marked as Exhibit G; a January 25, 2021 character letter from Sim Johal, marked as Exhibit H; and a January 22, 2021 character letter from Francia Flores, marked as Exhibit I. Complainant objected to the letters and the California Highway Patrol report on hearsay and authenticity grounds; Complainant raised no objections to the Walgreens's performance report or the ART Reproductive Center information. Complainant's objections, marked as Exhibits 10 and 11, are overruled, and Exhibits A through I are admitted as administrative hearsay. On her own motion, the ALJ redacted confidential personal information from Exhibit D to protect the privacy of Respondent and her partner.

The record was closed and the matter was submitted for decision on February 3, 2021.

SUMMARY

Complainant seeks to discipline Respondent's pharmacy technician registration based on Respondent's alleged possession of methamphetamines and her failure to disclose in her license renewal application a 2019 criminal conviction for driving without a license. Complainant failed to establish Respondent possessed methamphetamines or violated any state law regarding the possession of controlled substances. However, Respondent provided false information to the Board regarding her criminal conviction for driving without a license. While Respondent's act constitutes unprofessional conduct, it does not warrant revocation, suspension, or monitoring of her pharmacy technician registration. A public reproof will be sufficient to protect the public interest.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 2, 2008, the Board issued Pharmacy Technician Registration number TCH 83569 to Respondent. Respondent's registration is scheduled to expire on September 30, 2021.

2. On April 30, 2020, Complainant, in her official capacity, executed the Accusation in this matter. Respondent timely filed a notice of defense. This hearing followed.

Respondent's Alleged Possession of a Controlled Substance

3. The Accusation alleges license discipline is warranted because Respondent was found to be in possession of methamphetamines and an opium pipe on June 12, 2019, in violation of the Health and Safety Code as well as the Business and Professions Code. To support the allegation, Complainant offered a report prepared by the arresting Los Angeles County Sheriff Department deputy (LASD Report). (Exhibit 6.) Complainant offered no other evidence in support of its claim.

4. The LASD Report states in relevant part as follows:

While Deputy Chapman and I were on patrol in our marked black and white Los Angeles County Sheriff's patrol vehicle, we observed a red Lexus CT200H with paper plates

The vehicle did not have any plates displayed (a violation of 5200(a) CVC). We conducted a stop to either warn or cite the driver for the a [s/c] traffic violation.

(Exhibit 6, p. AG-60.)

5. The LASD Report notes that when the deputies approached, Respondent appeared startled and moved her hand from the steering wheel to the center console and back again. (Exhibit 6, p. AG-60.) According to the Report, Respondent did not have her driver's license with her, and she informed the deputies the vehicle belonged to her mother. The deputies' search of the crime database from their vehicle revealed Respondent's license had been suspended as of April 8, 2017, for failure to appear in response to a California Highway Patrol citation, and the Lexus vehicle belonged to Respondent's mother. The registration for the mother's vehicle had expired.

6. Because Respondent appeared not to have a valid driver's license and the vehicle was unregistered, the deputies had the vehicle towed. In conducting an inventory of the car, the deputies found Respondent's California identification card, a "pink bag" containing a plastic baggie with a crystalline substance, and a glass pipe used to ingest methamphetamines, all on the front passenger seat. According to the LASD Report, the items were found in the area Respondent was reaching for when the sheriffs initially approached her vehicle. (Exhibit 6, p. AG-61.) The crystalline substance was later found to contain 2.9923 grams of methamphetamine. (Exhibit 7.)

7. The deputies thereafter arrested Respondent for possession of methamphetamine and an opium pipe as well as for driving with a suspended license. According to the LASD Report, after waiving her right to an attorney, Respondent told the deputies that "she does what [she] has to do to take care of her daughter" and "the purse in the front seat was hers." (Exhibit 6, p. AG-61.) Respondent declined to make any further statement to the deputies at that time.

8. The LASD Report is internally inconsistent and incomplete. As a preliminary matter, it states the vehicle Respondent was driving had paper license plates but then states the sheriffs stopped the vehicle because it had no plates. More relevant, the Report does not make clear whether Respondent's purse was the "pink bag" in which the methamphetamine was found, whether the "pink bag" was found in Respondent's purse, or whether the "pink bag" was entirely separate from Respondent's purse. Thus, contrary to the conclusion reached in the Board's Investigation Report (exhibit 5, p. AG-48), Respondent's alleged admission reflected in the LASD Report that she owned the purse in the front seat does not constitute an admission that the "pink bag" and its contents belonged to her.

9. Respondent disputed the accuracy of the LASD Report. At hearing, she denied the methamphetamine and the pipe found in her mother's car vehicle belonged to her. She testified the pink bag was not in her purse and did not belong to her. Respondent explained she was driving her mother's car because her mother had been admitted to the hospital, and she was taking the car from the hospital back to her mother's home. Respondent stated she intended to return to the hospital by a car service. Respondent did not know how the pink bag ended up on the passenger seat, and she denied any knowledge of its contents.

10. Respondent also denied making the statements quoted in the LASD Report. Respondent testified she has three children, and it therefore made no sense for her to say she was doing something to support her daughter. Respondent asserted her ownership of the purse did not mean that she owned the pink bag as well. Respondent also testified it would make sense for her to move her hand toward the center console and passenger seat when the deputies approached because her California identification card was in that area.

11. Based on her June 12, 2019 arrest, Respondent was initially charged with misdemeanor possession of methamphetamine and an opium pipe as well as driving with a suspended license. On September 11, 2019, the court in the Superior Court of California, County of Los Angeles, case number 9BL06415, dismissed those charges based on a plea bargain and in the interests of justice pursuant to Penal Code section 1385. (Exhibit 8, p. AG-69.) The court then convicted Respondent, on her plea of no contest, of violating Vehicle Code section 12500, subdivision (a), driving without a valid driver's license, a misdemeanor. (Super. Ct., L.A. County 2019, No. 9BL06415.) The court placed Respondent on 24 months of summary probation and ordered her to pay \$300 in penalties and attend 45 Alcoholics Anonymous or Narcotics Anonymous (NA)

meetings. Separate court documents show that the charges relating to Respondent's suspension of license because of a California Highway Patrol violation, which in part prompted Respondent's arrest, were dismissed in the interests of justice on April 15, 2019, before Respondent's June 12, 2019 arrest. (Exhibit F.)

12. Respondent testified the deputies made fun of her and roughed her up for no reason during the arrest. Respondent's ex-partner is an LASD deputy (see exhibit D), and Respondent thought her poor treatment was because the deputies were aware of her previous relationship.

13. Respondent does not have a history of methamphetamine use. No evidence was presented Respondent had ever been arrested or convicted for any drug-related law violation before June 2019.

False Statement on License Renewal Application

14. Respondent submitted her renewal application to the Board on September 27, 2019. She declared under penalty of perjury that the information she provided in the application was true and correct.

15. Respondent answered "No" to the question, "Since your last renewal, have you had any disciplinary action against any license issued by a governmental agency or have you been convicted as defined in Section 490 of the Business and Professions Code, or any violation of law in this or any other state, the United States, or other country." Respondent's answer to the renewal application question was false because she was convicted of a crime, driving without a license, on September 11, 2019.

16. Respondent acknowledged she made a mistake in filling out her application, and she took full responsibility for the error. She testified she checked off "no" because she did not understand the nature of her conviction for driving without a license.

Rehabilitation and Mitigation

17. Respondent is 38 years old and a single parent for her three children.

18. Respondent has no history of license discipline. Her September 2019 criminal conviction was her first and only criminal conviction.

19. Respondent has been working as a pharmacy technician for more than twenty years. She currently is awaiting disability compensation from her job as a pharmacy technician at Walgreens. Respondent has worked at Walgreens as a pharmacy technician since 2017; before 2017, she worked at a registry pharmacy, at White Memorial Medical Center Pharmacy Department, and at a Kaiser Permanente (Kaiser) hospital pharmacy.

20. Respondent is active in her children's school and activities. Before the pandemic, she accompanied her children on field trips and assisted their teachers; she was also the team mother for her children's sports teams. In addition, Respondent volunteers with the STAR Foundation and made over 200 food baskets for the homeless.

21. Respondent attended the 45 sessions of NA ordered by the court. Respondent reported she learned how to be more compassionate to others from the NA meetings. Respondent denies she abuses controlled substances or has a drug problem.

22. Respondent hopes to finish her schooling to become a nurse. However, she cannot obtain her nursing license until this matter has been resolved. In the meantime, Respondent intends to return to work as a pharmacy technician because she loves what she does.

23. Several friends submitted letters in support of Respondent's character. Each was aware of this discipline proceeding. Ms. Andrea Ibarra, a long-time close friend, described Respondent as an "honest, hard-working individual." (Exhibit E.) Mr. William Sanchez, Respondent's neighbor of 10 years, described Respondent as a "professional" and a "hardworking mother" with "integrity, responsibility, respect, and trustworthiness." (Exhibit G.) Ms. Sim Johal wrote of Respondent's "desire for excellence" and "extreme intelligence." (Exhibit H.)

24. Respondent also submitted reports from her supervisors vouching for her work performance. (Exhibits A, B, and C.) Her supervisor at Kaiser described Respondent as an "extraordinary employee," "a vital member of the Inpatient Pharmacy Team," and "steadfast in her dependability, cheerfulness, and calmness." (Exhibit B.) A 2018 Walgreens Performance Review gave Respondent an overall rating of 4.3 out of 5, "Exceeding Expectations." (Exhibit C.) A former work colleague and current friend, Francia Flores, also vouched for Respondent's compassion and knowledge in the medical field and her excellence as a pharmacy technician. (Exhibit I.)

Costs

25. The Board seeks reimbursement of \$4,847.50 in prosecution costs and \$25 in investigation costs. Of the prosecution costs, 12.25 hours totaling \$2,695 were incurred by attorneys, and 10.5 hours totaling \$2,152.50 were incurred by a paralegal working on the matter.

26. Respondent cannot afford to pay the Board's requested costs. She has been out of work awaiting disability compensation from Walgreens because of a work-related injury. She has been unable to pay her rent, and she has had difficulty feeding her children. When she returns to work, her salary will be \$14 an hour.

LEGAL CONCLUSIONS

1. The Board is responsible for licensing and disciplining pharmacy technicians. (Bus. & Prof. Code, § 4300.) The Board's highest priority is the protection of the public. (Bus. & Prof. Code, § 4001.1.)

Burden and Standard of Proof

2. Absent a statute to the contrary, the burden of proof in administrative disciplinary proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The burden of proof here is thus on Complainant.

3. In determining the proper standard of proof to apply in license disciplinary proceedings, courts have distinguished professional licenses and nonprofessional or occupational licenses. In proceedings involving a professional license, the standard of proof is clear and convincing evidence, while in disciplinary proceedings involving a nonprofessional or occupational license, the standard of proof is preponderance of the evidence. (*Lone Star Security & Video, Inc. v. Bureau of Security & Investigative Services* (2012) 209 Cal.App.4th 445, 453.)

4. Complainant's counsel argued at hearing that clear and convincing is the standard of proof in this matter. However, a pharmacy technician holds an

occupational license, not a professional one, and therefore the standard of proof in these proceedings is a preponderance of the evidence. (See Evid. Code, § 115.) As stated by the Board's Disciplinary Guidelines (Guidelines), "Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist." (Guidelines, p. 43.) To obtain a license, an applicant must complete 240 hours of instruction covering, among other things, "the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy." (Cal. Code Regs., tit. 16, § 1793.6.) This requirement is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.)

5. A pharmacy technician also performs nondiscretionary tasks that do not require the type of professional judgment exercised by a pharmacist. "A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." (Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician's nondiscretionary tasks may include "(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging." (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized "to perform any act requiring the exercise of professional judgment by a

pharmacist.” (Bus. & Prof. Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, § 1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient’s medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

6. “‘Preponderance of the evidence’ means evidence that has more convincing force than that opposed to it.’ [Citations.].....The sole focus of the legal definition of “preponderance” in the phrase “preponderance of the evidence” is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325, original italics.) “If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation].” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Relevant Statutes and Regulations

7. The Board may revoke or suspend a pharmacy technician registration for unprofessional conduct. (Bus. & Prof. Code, § 4301.) According to section 4301, unprofessional conduct includes the following:

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(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.

8. Health and Safety Code section 11377, subdivision (a), prohibits possession of a controlled substance without a valid prescription. Health and Safety Code section 11364, subdivision (a), prohibits possession of an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking a controlled substance. Business and Professions Code section 4060 prohibits a pharmacy technician registrant from possessing a controlled substance without a prescription unless the substance is in stock in containers correctly labeled with the name and address of the supplier or producer.

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

First Cause for Discipline

10. Complainant established by a preponderance of the evidence that Respondent knowingly failed to disclose her 2019 criminal conviction on her pharmacy technician registration renewal application. (Factual Findings 14–16.) The term “knowingly” does not require Respondent to have any specific intent for failing to disclose her criminal conviction; she only needs to have knowledge of the facts. (*Brown v. State Department of Health* (1978) 86 Cal. App.3d 548, 554-555.) Here, Respondent had been convicted and sentenced two weeks before she signed the renewal application. Respondent thus had knowledge of the criminal conviction. Cause therefore exists under Business and Professions section 4301, subdivision (g), to discipline Respondent’s registration as set forth in the First Cause for Discipline.

Second and Third Causes for Discipline

11. Complainant did not establish by a preponderance of the evidence that Respondent unlawfully possessed methamphetamine or an opium pipe in violation of Health and Safety Code sections 11377, subdivision (a), and 11364, subdivision (a), or Business and Professions Code section 4060. According to the California Supreme Court, “The essential elements of unlawful possession of a controlled substance are ‘dominion and control of the substance in a quantity usable for consumption or sale, with knowledge of its presence and of its restricted dangerous drug character. Each of these elements may be established circumstantially.’” (*People v. Martin* (2001) 25 Cal.4th 1180, 1184 (*Martin*), citations omitted.)

12. Complainant failed to satisfy the criteria outlined in *Martin* to establish Respondent was in unlawful possession of methamphetamine and an opium pipe. A preponderance of the evidence does not demonstrate Respondent had any knowledge

that a plastic bag containing methamphetamine or an opium pipe was in her mother's car. Without such knowledge, Respondent could not exercise the dominion and control over the methamphetamine and pipe required to establish possession. As set forth in Factual Findings 3 through 13, the LASD Report, which constitutes Complainant's only evidence in support of the Second and Third Causes for Discipline, is inconclusive, particularly when weighed against Respondent's denial that neither the methamphetamines nor the "pink bag" the methamphetamines were found in, or the pipe belonged to her. In addition, Respondent denied ever using or selling methamphetamines, and other evidence, including Respondent's lack of any previous criminal convictions for unlawful drug possession, the absence of any license discipline, the letters extolling her dependability and trustworthiness from her friends and colleagues, and her positive work evaluations, further weigh against a finding that the methamphetamines or the pipe were hers. Cause therefore does not exist under Business and Professions Code section 4301, subdivisions (j) or (o), for disciplining Respondent's license for unprofessional conduct based on any violation of state law regulating controlled substances and dangerous drugs as set forth in the Second and Third Causes for Discipline.

Disposition

13. The task in disciplinary cases is preventative, protective, and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.) Here, Complainant has demonstrated that Respondent committed unprofessional conduct by failing to disclose a 2019 misdemeanor criminal conviction. Although the need for a pharmacy technician to conduct herself with honesty and to carefully follow instructions is of paramount importance, Respondent's lapse in this one isolated instance does not warrant license revocation, suspension, or monitoring. This is especially true considering the absence

of any public harm caused by Respondent's false statement and Respondent's unblemished license history. A public letter of reproof will serve notice to Respondent that her conduct contravened the Pharmacy Law, and constitutes a warning that, in the unlikely event of a similar recurrence, more serious discipline would be warranted.

14. Accordingly, Respondent is publicly reproved for her violation of Business and Professions section 4301, subdivision (g).

Costs

15. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover the reasonable costs of prosecution and enforcement of this matter. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or the severity of the discipline imposed reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, 29 Cal.4th at p. 45.)

16. Complainant requests reimbursement of \$4,872.50 in investigation and enforcement costs. Application of the *Zuckerman* factors demonstrates the unreasonableness of the requested costs. Respondent was successful in having two of the three causes for discipline dismissed. She had good faith in the merits of her position and raised a colorable challenge to the proposed discipline. And as noted in

Factual Finding 26, Respondent lacks the financial circumstances to pay any of the requested costs. Accordingly, no costs shall be imposed.

ORDER

Pharmacy technician registration number TCH 83569, issued to respondent Denise Elaine Rayos, is publicly reproved for providing false information in her license renewal application.

DATE: 02/19/2021

Cindy F. Forman

Cindy F. Forman (Feb 19, 2021 08:58 PST)

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings

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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. 6910

13 **DENISE ELAINE RAYOS**
14 **9217 Muroc St.**
Bellflower, CA 90706

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **83569**

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 (Board).

22 2. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 83569 to Denise Elaine Rayos (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 September 30, 2021, unless renewed.

26 **JURISDICTION**

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

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

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

6. 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.”

STATUTORY PROVISIONS

7. 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 shall include, but is not limited to, any of the following:

• • • •

“(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

• • • •

“(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.

• • • •

“(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. . . .”

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

8. Health and Safety Code section 11364, subdivision (a), provides that it is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking a controlled substance.

PHARMACY LAW

9. Section 4060 states:

“No person shall 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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

“Nothing in this section authorizes 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.”

COST RECOVERY

10. Section 125.3 provides 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.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

11. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to

Business and Professions Code section 4022.

BACKGROUND

12. On or about June 12, 2019, Respondent drove a vehicle without a valid driver's license and was found in possession of a plastic bag containing 2.9923 grams of Methamphetamine and a glass smoking pipe with residue. Respondent admitted that the purse containing the drugs belonged to her and that she does what she has to do to take care of her daughter.

13. On or about September 11, 2019, Respondent was convicted of one interlineated misdemeanor count of violating Vehicle Code section 12500(a) [drive without a valid driver's license] in the criminal proceeding entitled *The People of the State of California v. Denise Rayos* (Super. Ct. L.A. County, 2019, No. 9BL06415). The court placed Respondent on 24 months of probation, and ordered her to attend 45 NA/AA meetings.

FIRST CAUSE FOR DISCIPLINE

(False Statement on License Application Renewal, September 27, 2019)

14. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (g), on the grounds of unprofessional conduct, in that on or about September 27, 2019, Respondent knowingly made a false statement and /or signed her September 2019 Renewal Application, Pharmacy Technician, that falsely represented a state of facts. Respondent answered "No" to the question:

"Since your last renewal, have you had any disciplinary action against any license issued by a governmental agency or have you been convicted as defined in Section 490 of the Business and Professions Code, or any violations of law in this or any other state, the United States, or other country?"

Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 13, inclusive, as though set forth fully.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Violating Drug Statutes – June 12, 2019)**

3 15. Respondent is subject to disciplinary action under sections 4300, 4301,
4 subdivision (j), on the grounds of unprofessional conduct, in that on and about June 12, 2019,
5 Respondent violated Health and Safety Code sections 11377, subdivision (a), and / or 11364,
6 subdivision (a), when she was in possession of a controlled substance and dangerous drug,
7 Methamphetamine, without a valid prescription, and / or an unlawful smoking device.
8 Complainant refers to and by this reference incorporates the allegations set forth above in
9 paragraph 14, inclusive, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Violating Pharmacy Law - June 12, 2019)**

12 16. Respondent is subject to disciplinary action under sections 4300, 4301,
13 subdivision (j), on the grounds of unprofessional conduct, in that on and about June 12, 2019,
14 Respondent violated section 4060 when she was in possession of a controlled substance and
15 dangerous drug, Methamphetamine, without a valid prescription. Complainant refers to and by
16 this reference incorporates the allegations set forth above in paragraph 14, inclusive, as though set
17 forth fully.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician Registration No. TCH 83569, issued
22 to Denise Elaine Rayos;

23 2. Ordering Denise Elaine Rayos to pay the Board of Pharmacy the reasonable costs of
24 the investigation and enforcement of this case, pursuant to Business and Professions Code
25 section 125.3; and,

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

DATED: April 30, 2020



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

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