

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

In the Matter of the Statement of Issues Against:

CYNTHIA ARLENE ESPARZA, Respondent

Pharmacy Technician Registration Applicant

Agency Case No. 6894

OAH No. 2020020787

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Repeval 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 May 27, 2020.

It is so ORDERED on April 27, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

14 **CYNTHIA ARLENE ESPARZA**

15 **Pharmacy Technician Registration**
16 **Applicant**

17 Respondent.

Case No. 6894

OAH No. 2020020787

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL

[Bus. & Prof. Code § 495]

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:
21

22 **PARTIES**

23 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
24 (Board). She brought this action solely in her official capacity and is represented in this matter by
25 Xavier Becerra, Attorney General of the State of California, by Katelyn E. Docherty, Deputy
26 Attorney General.

27 2. Cynthia Arlene Esparza (Respondent) is representing herself in this proceeding and
28 has chosen not to exercise her right to be represented by counsel.

1 **JURISDICTION**

2 3. On or about June 6, 2019, the Board received an application for a Pharmacy
3 Technician Registration from Respondent. The Board denied the application on November 1,
4 2019. Respondent timely requested a hearing with respect to the denial.

5 4. Statement of Issues No. 6894 was filed before the Board of Pharmacy (Board),
6 Department of Consumer Affairs and is currently pending against Respondent. The Statement of
7 Issues and all other statutorily required documents were properly served on Respondent on
8 February 11, 2020. A copy of Statement of Issues No. 6894 is attached as exhibit A and
9 incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Statement of Issues No. 6894. Respondent has also carefully read, and understands the effects of
13 this Stipulated Settlement and Disciplinary Order for Public Repeval.

14 6. Respondent is fully aware of her legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
16 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the
17 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas
18 to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 **CULPABILITY**

24 8. Respondent admits the truth of each and every charge and allegation in Statement of
25 Issues No. 6894.

26 9. Respondent agrees that her application as a Pharmacy Technician is subject to denial,
27 and she agrees to be bound by the Disciplinary Order below.

CONTINGENCY

1
2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and settlement, without notice to
5 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
6 that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the
7 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
8 Order, the Stipulated Settlement and Disciplinary Order for Public Repeval shall be of no force
9 or effect, except for this paragraph, it shall be inadmissible in any legal action between the
10 parties, and the Board shall not be disqualified from further action by having considered this
11 matter.

12 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
13 copies of this Stipulated Settlement and Disciplinary Order for Public Repeval, including
14 Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and
15 effect as the originals.

16 12. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
17 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
18 of their agreement. It supersedes any and all prior or contemporaneous agreements,
19 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
20 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
21 supplemented, or otherwise changed except by a writing executed by an authorized representative
22 of each of the parties.

23 13. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Board may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:

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27 ///

28 ///

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that the Application for Pharmacy Technician Registration of
3 Respondent Cynthia Arlene Esparza is hereby granted. Upon successful completion of all
4 licensing requirements, a registration shall be issued to Respondent. Said license shall be
5 publicly reprovod by the Board of Pharmacy under Business and Professions Code section 495 in
6 resolution of Statement of Issues No. 6894, attached as exhibit A.

7 **ACCEPTANCE**

8 I have carefully read the Stipulated Settlement and Disciplinary Order for Public Reapproval.
9 I understand the stipulation and the effect it will have on my Pharmacy Technician Registration.
10 I enter into this Stipulated Settlement and Disciplinary Order for Public Reapproval voluntarily,
11 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
12 Pharmacy.

13
14 DATED: _____
15 *CYNTHIA ARLENE ESPARZA*
Respondent

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1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that the Application for Pharmacy Technician Registration of
3 Respondent Cynthia Arlene Esparza is hereby granted. Upon successful completion of all
4 licensing requirements, a registration shall be issued to Respondent. Said license shall be
5 publicly reproved by the Board of Pharmacy under Business and Professions Code section 495 in
6 resolution of Statement of Issues No. 6894, attached as exhibit A.

7 ACCEPTANCE

8 I have carefully read the Stipulated Settlement and Disciplinary Order for Public Repeval.
9 I understand the stipulation and the effect it will have on my Pharmacy Technician Registration.
10 I enter into this Stipulated Settlement and Disciplinary Order for Public Repeval voluntarily,
11 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
12 Pharmacy.

13
14 DATED:

3/16/2020

Cynthia Arlene Esparza
CYNTHIA ARLENE ESPARZA
Respondent

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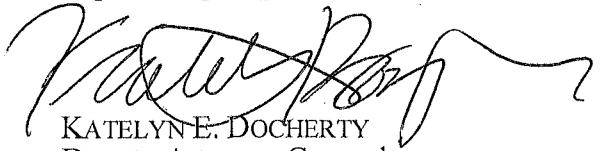
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 3/16/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DAVID E. BRICE
Supervising Deputy Attorney General



KATELYN E. DOCHERTY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 6894

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2 DAVID E. BRICE
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3 KATELYN E. DOCHERTY
Deputy Attorney General
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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 Statement of Issues
13 Against:

Case No. 6894

14 **CYNTHIA ARLENE ESPARZA**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about June 6, 2019, the Board received an application for a Pharmacy
24 Technician Registration from Cynthia Arlene Esparza (Respondent). On or about May 29, 2019,
25 Cynthia Arlene Esparza certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on November
27 1, 2019.
28

1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Code section 480 states, in pertinent part:

7 (a) A board may deny a license regulated by this code on the grounds that the
8 applicant has one of the following:

9 (1) Been convicted of a crime. A conviction within the meaning of this section
10 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
11 Any action that a board is permitted to take following the establishment of a
12 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 the
provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

13 (3) (A) Done any act that if done by a licentiate of the business or profession in
question, would be grounds for suspension or revocation of license.

14 (B) The board may deny a license pursuant to this subdivision only if the crime
15 or act is substantially related to the qualifications, functions, or duties of the business
or profession for which application is made.

16 (b) Notwithstanding any other provision of this code, a person shall not be
17 denied a license solely on the basis that he or she has been convicted of a felony if he
or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
18 convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
19 person when considering the denial of a license under subdivision (a) of Section 482.

20 (c) Notwithstanding any other provisions of this code, a person shall not be
21 denied a license solely on the basis of a conviction that has been dismissed pursuant
to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of
22 the Penal Code shall provide proof of the dismissal.

23 5. Code section 492 states, in pertinent part:

24 Notwithstanding any other provision of law, successful completion of any
25 diversion program under the Penal Code, or successful completion of an alcohol and
26 drug problem assessment program under Article 5 (commencing with Section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
27 agency established under Division 2 (commencing with Section 500) of this code, or
any initiative act referred to in that division, from taking disciplinary action against a
licensee or from denying a license for professional misconduct, notwithstanding that
28 evidence of that misconduct may be recorded in a record pertaining to an arrest . . .

1 6. Code section 4202(c) states:

2 The board shall conduct a criminal background check of the applicant to
3 determine if an applicant has committed acts that would constitute grounds for denial
4 of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of
5 Division 1.5.

6 7. Code section 4300(c) states, in pertinent part:

7 The board may refuse a license to any applicant guilty of unprofessional
8 conduct. The board may, in its sole discretion, issue a probationary license to any
9 applicant for a license who is guilty of unprofessional conduct and who has met all
10 other requirements for licensure. . . .

11 8. Code section 4301 states, in pertinent part:

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

15 ...

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

21 ...

22 (k) The conviction of more than one misdemeanor or any felony involving the
23 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
24 or any combination of those substances.

25 (l) The conviction of a crime substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. The record of conviction of a
27 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
28 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.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Convictions)**

3 9. Respondent's application is subject to denial under Code sections 480(a)(1), 4300
4 subdivision (c), and 4301 subdivision (l) in that Respondent was convicted of crimes that are
5 substantially related to the qualifications, functions, and duties of a licensee, as follows:

6 a. On or about March 16, 2016, in the case of *People v. Cynthia Arlene Esparza*,
7 (Super. Ct. Merced County, 2016, Case No. 15CR-04893), Respondent was convicted by the
8 Court on her guilty plea of violating Vehicle Code sections 23152(b) (driving a vehicle with a
9 blood alcohol level of .08% or higher), a misdemeanor. The circumstances of the crime were that
10 on or about February 1, 2015, an officer from the Merced Police Department conducted a traffic
11 stop on a vehicle for making a wide turn into the bicycle lane and drifting between lanes in
12 Merced. Upon contact with the driver of the vehicle, identified as Respondent, the officer noticed
13 a smell of alcohol emitting from Respondent's vehicle and that Respondent had slurred speech.
14 Respondent failed to properly complete the Field Sobriety Tests ("FST"), and refused to submit to
15 a preliminary alcohol screening test. As a result of Respondent's performance on the FSTs,
16 Respondent was arrested and taken to Merced County Jail. Respondent's blood alcohol measured
17 0.20% and 0.19%.

18 b. On or about April 28, 2016, in the case of *People v. Cynthia Esparza*, (Super.
19 Ct. Merced County, 2016, Case No. 15-CR-04906), Respondent was convicted by the Court on
20 her plea of no contest of violating Vehicle Code sections 23152(b) (driving a vehicle with a blood
21 alcohol level of .08% or higher) and 14601.5(a) (driving on a suspended license), both
22 misdemeanors. The circumstances of the crime were that on or about May 28, 2015, an officer
23 with the California Highway Patrol conducted a traffic stop on a vehicle being operated without a
24 front license plate in Merced. Upon contact with the driver of the vehicle, identified as
25 Respondent, the officer noticed a smell of alcohol emitting from the vehicle. Respondent
26 performed poorly on the FSTs, and refused to submit to a preliminary alcohol screening test. As a
27 result of Respondent's performance on the FSTs Respondent was arrested and taken to Merced
28 County Jail. Respondent's blood alcohol measured 0.15%, 0.22%, and 0.22%.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Dangerous Use of Alcohol)**

3 10. Respondent's application is subject to denial under Code sections 480, subdivision
4 (a)(3)(A), 4300 subdivision (c), and 4301, subdivision (h), in that Respondent used alcoholic
5 beverages in a manner as to be dangerous to herself, other persons, or the public, as set forth more
6 particularly in paragraph 9.

7 **THIRD CAUSE FOR DENIAL OF APPLICATION**

8 **(Multiple Convictions Involving Alcohol)**

9 11. Respondent's application is subject to denial under Code sections 480, subdivision
10 (a)(3)(A), 4300 subdivision (c), and 4301, subdivision (k), in that Respondent was convicted of
11 more than one misdemeanor involving the use, consumption, or self-administration of alcohol, as
12 set forth more particularly in paragraph 9.

13 **PRAYER**

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

- 16 1. Denying the application of Cynthia Arlene Esparza for a Pharmacy Technician
17 Registration;
18 2. Taking such other and further action as deemed necessary and proper.

19
20 DATED: February 4, 2020



21 ANNE SODERGREN
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 *Complainant*

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