

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

In the Matter of the Accusation Against:

TENISHIA PATRICE MUMPHREY, Respondent

Pharmacy Technician Registration No. TCH 85431

Agency Case No. 7037

OAH No. 2021020281

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, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to Page 9, Paragraph 19 and Page 10, Paragraph 21:

The date "May 16 or May 21, 2021" should read "May 16 or May 21, 2020".

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective at 5:00 p.m. on May 26, 2021. It is so ORDERED on April 26, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe
Board President

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:

TENISHIA PATRICE MUMPHREY

Pharmacy Technician Registration No. TCH 85431

Respondent.

Agency Case No. 7037

OAH No. 2021020281

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by video and telephone conference on March 4, 2021.

Christine J. Lee, Deputy Attorney General, and appeared by video on behalf of complainant Anne Sodergren (Complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Tenishia Patrice Mumphrey (Respondent) appeared by telephone on her own behalf.

Testimony and documentary evidence were received. The record was closed and the matter was submitted for decision on March 4, 2021.

SUMMARY

Complainant seeks to discipline Respondent's pharmacy technician registration based on her alleged diversion of controlled substances from her employer.

Complainant established by a preponderance of the evidence that Respondent engaged in unprofessional conduct by diverting a total of 117 tablets of tramadol 50 mg (tramadol) between May 15, and May 18, 2019, and on May 21, 2019. Respondent failed to submit any evidence of rehabilitation or mitigation. Public protection therefore requires the revocation of Respondent's pharmacy technician registration.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 13, 2008, the Board issued pharmacy technician registration number TCH 85431 to Respondent. Respondent's registration is scheduled to expire on February 28, 2022. On December 24, 2020, Respondent's registration was suspended pursuant to an Interim Suspension Order issued in OAH case number 2020120083.

2. On January 8, 2021, Complainant, in her official capacity, executed the Accusation in this matter. Respondent timely filed a notice of defense. This hearing followed.

Diversion of Tramadol

3. At all times relevant to the charges in the Accusation, Respondent was employed as a pharmacy technician at Kaiser Permanente Pharmacy #197 (Pharmacy), located in Fontana, California. Respondent had worked at the Pharmacy for approximately 18 months before the incidents giving rise to the Accusation. As part of her duties, Respondent filled, ordered, and received medications, typed prescriptions, and compounded drugs.

4. During this same period, Dean Sunyoung Pak, Jr., was the Pharmacy's designated pharmacist-in-charge (PIC). On May 28, 2020, Pharmacist Pak notified the Board in writing of a loss of 117 tramadol tablets, representing 3.9 percent of tramadol acquisitions. Tramadol is a Schedule IV controlled substance used to treat pain. In an accompanying DEA Form 106 Report, Pharmacist Pak reported the loss as suspected employee theft and estimated the purchase value of the 117 tramadol tablets to the Pharmacy as \$97. The Board initiated an investigation into the Pharmacy's operations and employees led by Inspector Elham Delune, Pharm. D., who submitted a report summarizing her findings and also testified at hearing.

5. During the May 2020 period, the Pharmacy filled an average of 1,200 prescriptions each day and was staffed with seven pharmacists, nine to ten pharmacy technicians, and eight clerks. The Pharmacy has an open floor plan, with 33 surveillance cameras to monitor activities within the Pharmacy and its lobby. Drugs are kept in open bins on pharmacy shelves and are arranged alphabetically.

6. Pharmacist Pak has been a California-licensed pharmacist since 2014. He was hired by Kaiser Permanente (Kaiser) in 2016 as an outpatient pharmacy supervisor and has been the outpatient pharmacy manager for the Pharmacy since June 2020.

Pharmacist Pak submitted a statement to the Board as part of the Board's investigation. He also submitted a declaration under penalty of perjury and testified at the hearing in support of his May 28, 2020 notice to the Board. His testimony was knowledgeable, candid, and supported by Pharmacy documentation and time-stamped and dated screenshots of videotapes from the Pharmacy's surveillance cameras.

7. Pharmacist Pak explained that as part of Kaiser's normal inventory practice, the Pharmacy performs routine "cycle counts" of medications randomly identified by Kaiser's computerized inventory system. These "cycle counts" require Pharmacy staff to count the amount of the identified medication by hand. The PIC then compares the actual physical inventory of the drug to the computer inventory report and identifies any discrepancies. In those instances where the amount of the medication physically present at the Pharmacy is less than expected by the inventory system, Kaiser policy requires the PIC to account for the missing medication and determine whether theft or diversion may have taken place.

8. On May 15, 2020, Kaiser's inventory system directed the Pharmacy to conduct a routine cycle count for tramadol. Tramadol, as a Schedule IV medication, is placed on the regular pharmacy shelves in the "T" section. On May 15, 2020, the Pharmacy supervisor physically counted 377 tramadol tablets. On May 18, 2020, a physical count showed that there were 1,291 tramadol tablets on the Pharmacy's shelves; Kaiser's inventory system showed 1,353 tramadol tablets. Based on the inventory data from May 15, adding the number of tramadol tablets acquired, and subtracting the amount dispensed, Pharmacist Pak determined the physical tramadol inventory on May 18, 2020, was 62 tablets short of what Kaiser's inventory system expected. According to Pharmacist Pak, the tramadol tablets were "unlikely" to have

been diverted during the receiving process because Kaiser's system automatically tracks medication orders, which are then manually received by the Pharmacy's pharmacists.

9. Because of the shortfall, Pharmacist Pak reviewed the videotape for May 16, 2020, from the Pharmacy's surveillance cameras, as part of his investigation into the source of the discrepancy. Time- and date-stamped screenshots from the videotape, admitted into evidence, showed the following:

A. At 8:43:11 a.m., Respondent removed the plastic tramadol bottle from the medication bin found on the shelf area for drugs starting with the letter "T" and stored it next to her workstation until 8:44:29 a.m. Pharmacist Pak was certain the bottle Respondent removed was tramadol because it was in the "T" drug inventory area and tramadol bottles have a distinctive bright green cap, which is depicted on the screenshot.

B. At 8:44:30 a.m., Respondent took the tramadol bottle along with a white plastic bottle to an isolated area of the Pharmacy inventory shelving area where the "C" medications were shelved. Respondent held both bottles in her hand. No one else was in the area. At 8:44:35 a.m., Respondent placed both her hands, each holding one bottle, deep into the shelf so they were not visible to the camera or anyone entering the area. The screenshot depicts Respondent moving her hands deep in the shelf, but it does not depict what Respondent is doing. At 8:44:52 a.m., Respondent removed one of her hands from the shelf and then appears to have placed that hand in her pocket away from the camera. It is difficult to discern whether Respondent placed anything in her pocket. Respondent then returned that hand to the shelf, and at 8:44:53 a.m., Respondent removed both hands from the shelving area, again with one

bottle in each hand. Respondent then walked back to the aisle where the tramadol is shelved, and at 8:45:18 a.m., returned the bottle to the tramadol bin.

C. None of the screenshots show Respondent filling any prescriptions from the tramadol bottle between 8:43 a.m. and 8:45 a.m. Nor do the screenshots show Respondent opening the tramadol bottle any time before returning it. The screenshots also do not show why Respondent carried the tramadol to the isolated area.

Pharmacist Pak testified his investigation found that Respondent had no business need either to remove the tramadol from the inventory bin or to be in the isolated inventory area with the tramadol bottle.

10. After noting Respondent's suspicious behavior on May 16, 2020, Pharmacist Pak continued to monitor her activities at the Pharmacy. Between May 16, and May 20, 2020, Respondent was off from work; Pharmacist Pak noted no significant variances between the inventory numbers and actual physical inventory during this period. On May 21, 2020, Respondent returned to the Pharmacy. At 7:53 a.m. on the morning of May 21, 2020, the Pharmacy had a starting inventory of 797 tramadol tablets. At 5:45 p.m., after Respondent's workday, the Pharmacy's physical inventory, after adding acquisitions and subtracting dispositions, showed a variance of 55 tramadol tablets when compared to the expected inventory.

11. Screenshots from surveillance footage taken on May 21, 2020, show Respondent engaging in behavior similar to her behavior on May 16, 2020:

A. At 8:36:34 a.m., Respondent removed the tramadol bottle from the drug bin on the Pharmacy's shelves. Respondent kept the tramadol bottle at her workstation until 9:03:30 a.m. There is no evidence that Respondent filled any prescription for tramadol during this period.

B. At 9:03:33 a.m., Respondent took the tramadol bottle, along with another white bottle, to the same isolated inventory area where she went on May 16, 2020. At 9:03:36 a.m., Respondent again then inserted both her hands, along with the tramadol and the other prescription bottle, into the inventory shelf, thus obscuring her hands from the cameras and observation. Respondent did not withdraw her hands until 9:03:41 a.m. At that time, Respondent turns away from the camera and therefore it cannot be seen what Respondent is doing with one of her hands. At 9:03:47 a.m., Respondent returned her hand to the shelf; again, it is unclear why. At 9:03:52 a.m., Respondent left the area with both bottles in her hand. At 9:03:56 a.m., Respondent returned the tramadol bottle to the tramadol bin.

C. None of the screenshots show Respondent filling any prescriptions during this period from the tramadol bottle. Nor is there any demonstrated purpose for Respondent to bring the tramadol to the isolated area. Pharmacist Pak testified his investigation found that Respondent had no business need either to remove the tramadol from the inventory bin or for Respondent to be in the isolated inventory area.

12. Pharmacist Pak testified Respondent exhibited unusual behavior on May 16, and May 21, 2021. According to Pharmacist Pak, it is unusual for a pharmacy technician to carry a bottle of one medication to a different area, to manipulate the medication bottle outside of everyone's view, and to not count out medication at the workstation. Based on Respondent's unusual behavior, the timing of the missing tramadol, and the absence of any business reason for Respondent to be handling tramadol during the period reflected in the screenshots, Pharmacist Pak concluded Respondent had diverted 117 tablets from the Pharmacy.

13. On May 22, 2020, the Pharmacy secured the tramadol tablets in a controlled substance safe, and no further incidents were reported. On June 2, 2020, the Pharmacy placed Respondent on administrative leave pending a compliance investigation. On August 14, 2020, after an internal Kaiser hearing, Respondent left her position at the Pharmacy.

14. As part of her investigation, Inspector Delune audited the Pharmacy's tramadol inventory for the period of November 17, 2019, through May 30, 2020. The audit found a variance of 1,364 tablets, showing the Pharmacy purchased a greater amount of tramadol than it dispensed and suggesting the Pharmacy's loss of tramadol was due to employee diversion or other causes. Inspector Delune also reviewed the video surveillance tapes provided by the Pharmacy and found Pharmacist Pak's description of what occurred to be accurate.

15. A report generated by the Controlled Substance Utilization Review and Evaluation System (CURES) shows no record of any prescriptions issued to Respondent for tramadol between June 9, 2017, and May 29, 2020.

Respondent's Evidence

16. Respondent is 37 years old. She has three children and is their sole source of financial support.

17. Respondent has worked at Kaiser for 13 years without incident. While working at Kaiser and raising her children, Respondent obtained her pharmacy technician registration in 2008. Before starting work at the Pharmacy, Respondent was employed at the Kaiser San Bernardino pharmacy from 2009 to 2010 and the Kaiser Victorville pharmacy from 2010 to 2019. Respondent transferred to each of the pharmacies because of family relocations.

18. Respondent liked working for Kaiser. She has no prior history of discipline on her license. Until she left Kaiser in 2020, she had not been disciplined for her work performance.

19. Respondent denied diverting tramadol tablets from the Pharmacy. Respondent testified she often pre-pulled medications off the shelves and therefore it was not unusual for her to have many bottles in her hand. Although she could not remember what she did on May 16 or May 21, 2021, she testified she was probably looking at the texts on her cellphone when she was in the isolated area of the Pharmacy. Respondent explained that Pharmacy technicians are not allowed to look at their cellphones at their work desks so she needed a secluded place to read her phone texts. Respondent also asserted that other medication bottles have green caps and therefore it was unclear whether the bottle she took from the shelf contained tramadol. Respondent additionally asserted that she received poor advice from her union during her Kaiser hearing, and if she had an opportunity to explain herself, she would not have had to leave the Pharmacy's employ.

20. Respondent also testified she was aware of Kaiser's policies, and she was very thorough in performing her job duties. She had performed "cycle counts" at the Pharmacy and knew that the "cycle counts" were not always accurate. Respondent also testified that any technician could change the counts for any medication; although she provided no evidence as to why the counts for tramadol were off.

21. Respondent's explanation for her actions on May 16 and May 21, 2020, was uncorroborated and not persuasive and, therefore, insufficient to contradict the inferences from the screenshots and Pharmacist Pak's testimony that Respondent diverted tramadol tablets on those two days. There are no screenshots showing Respondent handling a cellphone anytime during the relevant periods of either day.

Respondent also could have taken a break to look at her phone; she did not have to hide her alleged phone use in the shelves in an isolated inventory area. There also was no business reason for Respondent to handle tramadol on either May 16 or May 21, 2021, during the time designated on the screenshots; Pharmacist Pak testified Respondent did not fill any prescriptions for tramadol during that period on either day. Respondent's claim that many medications shared tramadol's green bottle cap was also refuted by Pharmacist Pak, who noted that no medications starting with a "T" had a green bottle cap.

22. Respondent submitted no letters vouching for her character or her work performance.

Costs

23. Complainant seeks reimbursement of \$5,265 of costs incurred by the Department of Justice handling this matter. According to the Certification of Christine J. Lee and accompanying spreadsheets, three attorneys and two legal analysts performed tasks related to this matter. Because there was a change in attorneys a month before trial, some of the costs incurred are duplicative. The reasonable enforcement costs therefore are reduced to \$4,000.

24. Complainant seeks reimbursement of \$6,564.25 in investigation costs. According to the Certification of Investigative Costs; Declaration of Elham Delune, Ms. Delune spent 47.25 hours investigating the matter and 7 hours preparing her report, at \$121 per hour. The hours spent on the Board's investigation are not broken down by task or date. The investigation also appears to have included an evaluation of Pharmacy's and Pharmacist Pak's actions. Accordingly, the 47.25 hours of investigating

costs are not properly supported and are disallowed. (Cal. Code Regs., tit. 1, § 1042, sub. (b)(1).) The reasonable investigation costs therefore are \$847.

25. Respondent cannot afford to pay the Board's requested costs at this time. She has not worked since she left the Pharmacy in the summer of 2020. Her costs to support her family exceed \$4,000 a month.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. 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.

2. 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 Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.)

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3. An applicant for a professional license must ordinarily satisfy extensive educational and training requirements and then pass a rigorous state-administered competency examination. In contrast, a nonprofessional license typically is issued without the need to demonstrate any specific education or skill such as a competency examination and upon a showing of good character.

4. Business and Professions Code section 4202 provides that the Board may issue a pharmacy technician registration to an applicant is a high school graduate or possesses a general education development certificate equivalent and meets any of the following requirements: has obtained an associate's degree in pharmacy technology; has completed a course of training specified by the Board; has graduated from a school of pharmacy recognized by the Board, or is certified by a pharmacy technician-certifying organization offering a certification program accredited by the National Commission for Certifying Agencies and approved by the Board. Pharmacist technicians, however, are not required to undergo any competency examination. They are only permitted to perform non-discretionary tasks that do not require a pharmacist's professional judgment. (Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) Therefore, the preponderance of the evidence standard applies in this proceeding because a pharmacy technician registration is a nonprofessional or occupational license.

5. "'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 Company* (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

6. 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.)

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:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

[¶] . . . [¶]

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

8. Business and Professions Code section 4022, subdivision (a), defines a "dangerous drug" as including "[a]ny drug that bears the legend: Caution: federal law prohibits dispensing without prescription, Rx only, or words of similar import."

9. 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 at a pharmacy in containers correctly labeled with the name and address of the supplier or producer.

10. United States Code, title 21, section 844, subdivision (a), prohibits any person from “knowingly or intentionally” possessing a controlled substance, unless such substance was obtained directly or under a valid prescription or order, from a practitioner while acting in the course of his or her professional practice.

11. Health and Safety Code section 11350, subdivision (a), prohibits the possession of a controlled substance without a prescription.

12. Tramadol is an opioid classified by Code of Federal Regulations, title 21, section 1308.14, subdivision (b)(3) as a Schedule IV controlled substance. Tramadol is also categorized as a dangerous drug under Business and Professions Code section 4022, subdivision (a).

First Cause for Discipline

13. Complainant did not establish by a preponderance of the evidence that Respondent engaged in unprofessional conduct outside of the conduct described in Business and Professions Code section 4301, subdivisions (f), i.e., engaging in acts of moral turpitude, dishonesty, and/or corruption and (j), i.e., violating laws regulating controlled substances and dangerous drugs, which are the bases for the second and third causes for discipline in the Accusation. The First Cause for Discipline is therefore duplicative and cumulative. Accordingly, cause therefore does not exist to discipline Respondent’s pharmacy technician registration based on the first cause for discipline.

Second Cause for Discipline

14. Complainant established by a preponderance of the evidence that Respondent engaged in acts of dishonesty by unlawfully diverting 117 tablets of tramadol while working as an employee of the Pharmacy. (Factual Findings 3–15, 21.) Cause therefore exists to discipline Respondent’s pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (f), as set forth in the second cause for discipline.

Third Cause for Discipline

15. Complainant established by a preponderance of the evidence that Respondent violated United States Code, title 21, section 844, subdivision (a), Business and Professions Code section 4060,¹ and Health and Safety Code section 11350, subdivision (a), all of which regulate controlled substances and dangerous drugs, when she diverted 117 tablets of tramadol without a prescription while working as an employee of the Pharmacy. (Factual Findings 3–15, 21.) Cause therefore exists to discipline Respondent’s pharmacy technician registration pursuant to Business and

¹ The Accusation mistakenly cites Respondent’s violation of Business and Professions Code section 4020 instead of Business and Professions Code section 4060 as a basis of discipline. (Exhibit 1, p. AGO-008, line 26.) The mistake is deemed inadvertent and nonprejudicial as the Accusation sets forth the language of section 4060 in full, and section 4020 is not relevant to this proceeding. (*Id.*, p. AGO 006-007.) Consequently, Respondent’s violation of Business and Professions Code section 4060 will be considered as a basis for discipline.

Professions Code section 4301, subdivision (j), as set forth in the third cause for discipline.

Disposition

16. The Board's Manual of Disciplinary Guidelines and Model Disciplinary Orders (revised 2/2017) (Guidelines) identifies four categories of violations and their associated recommended minimum and maximum penalties. The categories are arranged in ascending order from the least serious (Category I) to the most serious (Category IV), although any single violation in any category, or any combination of violations in one or more categories, may merit revocation. For pharmacy technicians, "the board believes an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and that if revocation is not imposed that a minimum Category III level of discipline should be imposed." (Guidelines, p. 5.). The minimum Category III discipline is 90 days actual suspension and five years of probation.

17. The Guidelines set forth factors to be considered in determining the penalty to be imposed in a given case. The factors include actual or potential harm to the public or any consumer; prior disciplinary record; prior warning(s); number and/or variety of current violations; nature and severity of the acts or offenses under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the act(s) or offense(s); whether the conduct was intentional or negligent, demonstrated incompetence; and financial benefit to the respondent from the misconduct. (Guidelines, p. 3.)

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18. Although Respondent had no prior discipline against her registration and the number of diverted tablets was relatively small, Respondent's conduct was intentional, recent, involved two separate incidents, and had the potential to cause harm to the public. Stealing controlled substances constitutes an abuse of Respondent's position as a trusted member of the Pharmacy. Respondent presented no evidence of mitigation or rehabilitation. Respondent expressed no remorse and failed to acknowledge responsibility for her conduct, even after being confronted with screenshots depicting her taking the tramadol bottle into an isolated area of the pharmacy and Pharmacist Pak's testimony that she had no business reason to remove the tramadol bottle from the bin. Respondent's failure to acknowledge and admit responsibility for her conduct raises concerns about her honesty and trustworthiness to perform the duties authorized by her pharmacy technician registration. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

19. The task in disciplinary cases is preventative, protective, and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.). The evidence presented in this matter, when considered with the Guidelines' recommended discipline, establishes that public protection requires the revocation of Respondent's pharmacy technician registration.

Costs

20. 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 licensee'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.)

21. Cause exists to direct Respondent to pay the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professional Code section 125.3. The reasonable cost of the investigation and enforcement of this matter is \$4,847. (Factual Findings 23 and 24.) However, based on Respondent's current financial circumstances as set forth in Factual Finding 25, and her inability to work as a pharmacy technician after the revocation of her registration, Respondent shall be required to pay \$1,500 of cost recovery as a condition precedent to obtaining the reinstatement of her revoked registration or issuance of a new registration or license from the Board. (Factual Finding 23.)


ORDER

1. Pharmacy technician registration number TCH 85431, issued to respondent Tenishia Patrice Mumphrey, is revoked. Respondent shall relinquish her pharmacy technician registration to the Board within 10 days of the effective date of this decision.

2. As a condition precedent to reinstatement of her revoked pharmacy technician registration, or the issuance of a new registration or license by the Board, Respondent shall reimburse the Board for its costs of investigation and enforcement in the amount of \$1,500. Said amount shall be paid in full before the reinstatement of her

Pharmacy Technician Registration, or the issuance of a new registration or license, unless otherwise ordered by the Board.

DATE: Mar 15, 2021


Cindy F. Forman (Mar 15, 2021 13:00 PDT)

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. 7037

13 **TENISHIA PATRICE MUMPHREY**
14 **7707 Calle Hacienda**
Highland, CA 92346

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **85431**

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.

22 2. On or about August 13, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 85431 to Tenishia Patrice Mumphrey (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on February 28, 2022, unless renewed. On December 24, 2020,
26 Respondent's registration was suspended pursuant to an Interim Suspension Order.

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JURISDICTION

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

4. BPC 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.

5. BPC 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:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

....

6. BPC section 4022, subdivision (a), defines a "dangerous drug" as including "[a]ny drug that bears the legend: Caution: federal law prohibits dispensing without prescription, Rx only, or words of similar import."

7. BPC section 4060 of the Code 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.

8. United States Code (USC), title 21, section 844, subdivision (a), states, in pertinent part:

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice.

9. California Health and Safety Code (HSC) section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

CONTROLLED SUBSTANCE/DANGEROUS DRUG

10. Tramadol is an opioid that is classified by Code of Federal Regulations, title 21, section 1308.14(b)(3) as a schedule IV controlled substance. Tramadol is also classified as a dangerous drug pursuant to BPC section 4022, subdivision (a).

COST RECOVERY

11. Section 125.3 of the BPC states, in pertinent part, 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.

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1 **FACTUAL BACKGROUND**

2 12. On May 28, 2020, the Board received notice from Kaiser Permanente Pharmacy
3 #197, located in Fontana, California, that Respondent had diverted/stolen 117 tramadol 50 mg
4 tablets. As a powerful opioid, tramadol is known to have a high risk for abuse and addiction.
5 Specifically, the complaint from Kaiser Permanente indicated that audits of Pharmacy #197's
6 tramadol 50 mg inventory revealed that 62 tramadol tablets had gone missing from the
7 pharmacy's inventory sometime between May 15, 2020 and May 18, 2020, and that another 55
8 tablets had gone missing on May 21, 2020. Further, the complaint stated that date and time
9 stamped surveillance video footage from the pharmacy showed Respondent unlawfully diverting
10 tramadol 50 mg tablets at approximately 8:45 a.m. on May 16, 2020, and again at approximately
11 9:03 a.m. on May 21, 2020.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct)

14 13. Respondent is subject to disciplinary action under BPC section 4301 in that Respondent
15 engaged in unprofessional conduct. Complainant refers to, and by this reference incorporates, the
16 allegations set forth above in paragraph 12, inclusive, as though set forth fully herein.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Dishonest Acts)

19 14. Respondent is subject to disciplinary action under BPC section 4301, subdivision (f) in that
20 Respondent engaged acts of moral turpitude, dishonesty and/or corruption. Complainant refers
21 to, and by this reference incorporates, the allegations set forth above in paragraph 12, inclusive, as
22 though set forth fully herein.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Violation of Laws Regulating Controlled Substances/Dangerous Drugs)

25 15. Respondent is subject to disciplinary action under BPC section 4301, subdivision (j),
26 in conjunction with USC, title 21, section 844, subdivision (a), BPC section 4020 and HSC
27 section 11350, subdivision (a), in that Respondent violated federal and state laws regulating
28 controlled substances and dangerous drugs. Complainant refers to, and by this reference

incorporates, the allegations set forth above in paragraph 12, inclusive, as though set forth fully herein.

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 85431, issued to Tenishia Patrice Mumphrey;
2. Ordering Tenishia Patrice Mumphrey 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: 1/8/2021

Signature on File

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

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Accusation.docx