

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

**In the Matter of the Accusation Against:**

**JESSICA NICOLE DA SILVA, Respondent**

**Pharmacy Technician License No. TCH 42363**

**Agency Case No. 7132**

**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on February 24, 2022.

It is so ORDERED on January 25, 2022.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly visible.

Seung W. Oh, Pharm.D.  
Board President

1 ROB BONTA  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 CRISTINA FELIX  
Deputy Attorney General  
4 State Bar No. 195663  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6321  
6 Facsimile: (916) 731-2126  
E-mail: Cristina.Felix@doj.ca.gov  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 7132

13 **JESSICA NICOLE DA SILVA**  
14 **1303 Iguana Circle**  
**Ventura, CA 93003**

15 **Pharmacy Technician License No. TCH**  
16 **42363**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

17 Respondent.

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

20 **PARTIES**

21 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy  
22 (Board). She brought this action solely in her official capacity and is represented in this matter by  
23 Rob Bonta, Attorney General of the State of California, by Cristina Felix, Deputy Attorney  
24 General.

25 2. Jessica Nicole Da Silva (Respondent) is representing herself in this proceeding and  
26 has chosen not to exercise her right to be represented by counsel.

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3. On or about July 10, 2002, the Board issued Pharmacy Technician License No. TCH 42363 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 7132 and will expire on May 31, 2022, unless renewed.

## JURISDICTION

4. Accusation No. 7132 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 13, 2021. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 7132 is attached as Exhibit A and incorporated by reference.

## **ADVISEMENT AND WAIVERS**

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 7132. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

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

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

## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 7132, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician License No. TCH 42363 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician License without further process.

## CONTINGENCY

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

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

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**ORDER**

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 42363, issued to Respondent Jessica Nicole Da Silva, is surrendered and accepted by the Board.

1. The surrender of Respondent's Pharmacy Technician License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 7132 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$9,278.75 prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 7132 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall not apply for licensure or petition for reinstatement for three (3) years from the effective date of the Board's Decision and Order.

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**ACCEPTANCE**

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: \_\_\_\_\_  
JESSICA NICOLE DA SILVA  
*Respondent*

**ENDORSEMENT**

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: \_\_\_\_\_  
Respectfully submitted,  
ROB BONTA  
Attorney General of California  
THOMAS L. RINALDI  
Supervising Deputy Attorney General  
  
CRISTINA FELIX  
Deputy Attorney General  
*Attorneys for Complainant*

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**ACCEPTANCE**

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: \_\_\_\_\_

11/16/2021

  
JESSICA NICOLE DA SILVA  
*Respondent*

**ENDORSEMENT**

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: \_\_\_\_\_

Respectfully submitted,

ROB BONTA  
Attorney General of California  
THOMAS L. RINALDI  
Supervising Deputy Attorney General

CRISTINA FELIX  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 7132**

1 ROB BONTA  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 CRISTINA FELIX  
Deputy Attorney General  
4 State Bar No. 195663  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6321  
6 Facsimile: (916) 731-2126  
E-mail: Cristina.Felix@doj.ca.gov  
7 *Attorneys for Complainant*

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9 **BEFORE THE**  
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7132

13 **JESSICA NICOLE DA SILVA**  
14 **1303 Iguana Circle**  
**Ventura, CA 93003**

**ACCUSATION**

15 **Pharmacy Technician License No. TCH**  
16 **42363**

Respondent.

17  
18 **PARTIES**

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

21 2. On or about July 10, 2002, the Board of Pharmacy issued Pharmacy Technician  
22 License Number TCH 42363 to Jessica Nicole Da Silva (Respondent). The Pharmacy Technician  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on May 31, 2022, unless renewed.

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26 ///

27 ///

1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that “[t]he board shall administer and enforce this  
6 chapter [Pharmacy Law, (Business and Profession Code, Sec 4000 et seq.)] and the Uniform  
7 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and  
8 Safety Code).”

9 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that “[e]very  
10 license issued may be suspended or revoked.”

11 **JURISDICTION**

12 6. This Accusation is brought before the Board under the authority of the following  
13 laws. All section references are to the Business and Professions Code unless otherwise indicated.

14 7. Section 4011 of the Code provides that “[t]he board shall administer and enforce this  
15 chapter [Pharmacy Law, (Business and Profession Code, Sec 4000 et seq.)] and the Uniform  
16 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and  
17 Safety Code).”

18 8. Section 4300, subdivision (a), of the Code states, in pertinent part, that “[e]very  
19 license issued may be suspended or revoked.”

20 9. Section 4300.1 of the Code states, in pertinent part:

21 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
22 operation of law or by order or decision of the board or a court of law, the placement of a license  
23 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
24 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
25 proceeding against, the licensee or to render a decision suspending or revoking the license.

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**STATUTORY PROVISIONS**

10. Section 4021 of the Code states, in pertinent part:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

11. Section 4022 of the Code states, in pertinent part:

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

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription, ‘Rx only,’ or words of similar import.

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

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

12. Section 4060 of the Code states, in pertinent part:

"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.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
2 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
3 devices."

4 13. Section 4301 of the Code states:

5 "The board shall take action against any holder of a license who is guilty of unprofessional  
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 . . . .

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

12 . . . .

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

15 . . . .

16 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
17 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
18 federal and state laws and regulations governing pharmacy, including regulations established by  
19 the board or by any other state or federal regulatory agency.

20 . . ."

21 14. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:

22 "Except as otherwise provided in this division, every person who possesses (1) any  
23 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of  
24 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
25 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
26 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
27 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
28 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more

1 than one year, except that such person shall instead be punished pursuant to subdivision (h) of  
2 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense  
3 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of  
4 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290  
5 of the Penal Code.”

6 15. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:

7 “Except as authorized by law and as otherwise provided in subdivision (b) or Section  
8 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
9 Business and Professions Code, every person who possesses any controlled substance which is  
10 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in  
11 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),  
12 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
13 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section  
14 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to  
15 practice in this state, shall be punished by imprisonment in a county jail for a period of not more  
16 than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

### 17 **REGULATORY PROVISIONS**

18 16. California Code of Regulations, title 16, section 1770, states:

19 "For the purpose of denial, suspension, or revocation of a personal or facility license  
20 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
21 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
22 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
23 licensee or registrant to perform the functions authorized by his license or registration in a manner  
24 consistent with the public health, safety, or welfare."

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1 **COST RECOVERY**

2 17. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

7 18. Hydrocodone/acetaminophen is a Schedule II controlled substance pursuant to Health  
8 and Safety Code section 11055 and a dangerous drug per Business and Professions code section  
9 4022.

10 **FACTUAL ALLEGATIONS**

11 19. From October 2020 through January 2021, Respondent worked as a pharmacy  
12 technician at Ralphs Pharmacy.

13 20. On October 13, 2020, an employee found a Hydrocodone/Acetaminophen 5-325 mg  
14 tablet inside a bag, outside of a vial, in the will call area. Employees double counted the tablets  
15 inside the vial and found the prescription was eight (8) tablets short. Random audits of  
16 Hydrocodone/Acetaminophen 5-325 mg tablets in the will call area conducted by Ralphs  
17 pharmacists confirmed shortages of the controlled substance in the will call area on the days  
18 Respondent worked in the pharmacy.

19 21. Video surveillance of Ralphs Pharmacy showed that Respondent manipulated bags  
20 containing prescriptions in the will call area such that she was able to take pills from the  
21 pharmacy, including on November 18, 2020 and December 3, 2020.

22 22. On January 20, 2021, Respondent admitted to diverting the medication from Ralphs  
23 starting in October 2020 for herself and her husband who had a broken ankle. She also admitted  
24 that her husband was not aware of the theft. Accordingly, she was terminated from Ralphs  
25 Pharmacy for theft of controlled substances.

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23. On January 28, 2021, the Board received a Report of Loss of Controlled substances from Ralphs Pharmacy which advised the Board of the loss of controlled substances as a result of Respondent's theft.

24. On February 26, 2021, Respondent provided a statement to a Board investigator admitting to removing the pills from the pharmacy to give to her husband for his ankle pain.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Unlawful Possession of Controlled Substances: Hydrocodone/Acetaminophen)**

25. Respondent is subject to disciplinary action under Code section 4059, subdivision (a), and 4060, in conjunction with Health and Safety Code section 11350, subdivision (a), on the grounds of unprofessional conduct, in that Respondent diverted 60 Hydrocodone/Acetaminophen 10-325 mg tablets and 22 Hydrocodone/Acetaminophen 5-325 mg without a valid prescription. Complainant refers to and by this reference incorporates the allegations set for above in paragraphs 19 through 24, inclusive, as though set forth fully.

#### **SECOND CAUSE FOR DISCIPLINE**

##### **(Unprofessional Conduct: Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

26. Respondent is subject to disciplinary action under Code section 4301, subdivisions (f), (j), and (o), in conjunction with Health and Safety Code section 11173, subdivision (a), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set for above in paragraphs 19 through 25, inclusive, as though set forth fully.

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**PRAYER**

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

1. Revoking or suspending Pharmacy Technician License Number TCH 42363, issued to Jessica Nicole Da Silva;

2. Ordering Jessica Nicole Da Silva 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: 7/1/2021

Signature on File

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

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