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

In the Matter of the Accusation Against:

MBEMBA PANGOU ROMAIN
470 Northgate Drive, #25
Manteca, CA 95336

Pharmacy Technician License No. TCH
135891

Respondent.

Case No. 7215

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 18, 2021, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 7215 against Mbemba Pangou Romain (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

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1 2. On or about October 16, 2013, the Board issued Pharmacy Technician License No.
2 TCH 135891 to Respondent. The Pharmacy Technician License was in full force and effect at all
3 times relevant to the charges brought in Accusation No. 7215 and will expire on November 30,
4 2022, unless renewed.

5 3. On or about December 3, 2021, Respondent was served by Certified and First Class
6 Mail copies of the Accusation No. 7215, Statement to Respondent, Notice of Defense, Request
7 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
8 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
9 section 4100, is required to be reported and maintained with the Board. Respondent's address of
10 record was and is: 470 Northgate Drive, #25, Manteca, CA 95336.

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

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

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

19 6. The Board takes official notice of its records and the fact that Respondent failed to
20 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
21 waived her right to a hearing on the merits of Accusation No. 7215.

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

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

27 8. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
as well as taking official notice of all the investigatory reports, exhibits and statements contained
therein on file at the Board's offices regarding the allegations contained in Accusation No. 7215,

1 finds that the charges and allegations in Accusation No. 7215, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 9. The Board finds that the actual costs for Investigation and Enforcement are \$1,803.75
4 as of January 12, 2022.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Mbemba Pangou Romain has
7 subjected her Pharmacy Technician License No. TCH 135891 to discipline.

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

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

12 a. Respondent is subject to disciplinary action under Code section 4301 subdivision (l);

13 b. Respondent is subject to disciplinary action under Code section 4301 subdivision (f);

14 c. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
15 Code section 4301;

16 d. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code
17 section 4301, subdivision (o).

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28 **ORDER**

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IT IS SO ORDERED that Pharmacy Technician License No. TCH 135891, issued to Respondent Mbemba Pangou Romain, is revoked.

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

This Decision shall become effective at 5:00pm on March 24, 2022.

It is so ORDERED on February 22, 2022.



Seung W. Oh Pharm, D
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

35824149 DOCX
DOJ Matter ID:SA2021305086

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 KAREN R. DENVIR
Supervising Deputy Attorney General
3 KATELYN E. DOCHERTY
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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. 7215

13 **MBEMBA PANGOU ROMAIN**
14 **470 Northgate Drive, #25**
Manteca, CA 95336

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **135891**

17 Respondent.

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20 **PARTIES**

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

23 2. On or about October 16, 2013, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 135891 to Mbemba Pangou Romain (Respondent). The Pharmacy
25 Technician License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on November 30, 2022, unless renewed.

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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 4300 of the Code states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and found
9 guilty, by any of the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not exceeding one year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the board in
15 its discretion may deem proper.

16 ...

17 (e) The proceedings under this article shall be conducted in accordance with
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
19 Government Code, and the board shall have all the powers granted therein. The
20 action shall be final, except that the propriety of the action is subject to review by the
21 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

22 5. Section 4300.1 of the Code states:

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

29 **STATUTORY PROVISIONS**

30 6. Section 4301 of the Code states, in pertinent part:

31 The board shall take action against any holder of a license who is guilty of
32 unprofessional conduct or whose license has been issued by mistake. Unprofessional
33 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.

...

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

...

(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.

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1 7. Section 4022 of the Code states:

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

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

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

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

12 8. Section 4059, subdivision (a), of the Code states:

13 (a) A person may not furnish any dangerous drug, except upon the prescription
14 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
16 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
17 naturopathic doctor pursuant to Section 3640.7.

18 9. Section 4060 of the Code states:

19 No person shall possess any controlled substance, except that furnished to a
20 person upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
22 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
23 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
24 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
25 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
27 shall not apply to the possession of any controlled substance by a manufacturer,
28 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.

HEALTH AND SAFETY CODE PROVISIONS

10. Health and Safety Code section 11173, subdivision (a), states:

 No person shall obtain or attempt to obtain controlled substances, or procure
or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
concealment of a material fact.

1 11. Health and Safety Code section 11350, subdivision (a), states:

2 Except as otherwise provided in this division, every person who possesses
3 (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1)
4 of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
9 to practice in this state, shall be punished by imprisonment in a county jail for not
10 more than one year, except that such person shall instead be punished pursuant to
11 subdivision (h) of Section 1170 of the Penal Code if that person has one or more
12 prior convictions for an offense specified in clause (iv) of subparagraph (C) of
13 paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense
14 requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

15 **COST RECOVERY**

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

20 **DRUG DESCRIPTIONS**

21 13. Promethazine with codeine is the generic name for Phenergan with codeine and is a
22 dangerous drug pursuant to Code section 4022 and a controlled substance pursuant to Health and
23 Safety Code section 11058, subdivision (c). Promethazine with codeine is indicated for use for
24 the treatment of a cough.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Conviction of Substantially Related Crime)**

27 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
28 in that Respondent was convicted of a crime substantially related to the practice of pharmacy.
The circumstances are as follows:

15. On January 21, 2021, in the criminal matter titled *People v. Romain* (San Joaquin
County Superior Court Case No. STK-CR-FE-2020-0000976), Respondent was convicted on his
plea of no contest to having violated Penal Code section 487(A), a misdemeanor. The court

1 sentenced Respondent to probation for a period of one year under terms and conditions to include
2 paying all fines, fees, and restitution, serving 30 days in jail, completion of 15 hours of
3 community service at a non-profit, and to stay away from the CVS on West March Lane, in
4 Stockton, California. The underlying circumstances were as follows:

5 16. On or about on January 11, 2020, Respondent was working as a pharmacy technician
6 for CVS at 2605 West March Lane in Stockton, California (CVS). On January 11, 2020, Officers
7 Gonzalez and Clark of the Stockton Police Department were dispatched to the CVS for a reported
8 employee theft. A loss prevention employee (LPE) with CVS told the officers that they had been
9 investigating employee theft of pharmaceuticals since November of 2019. The LPE told officers
10 that after reviewing video footage, pharmacy records, and employee schedules, they narrowed
11 down Respondent as the suspected thief. The LPE interviewed Respondent about the theft, and
12 during that interview Respondent admitted to the theft of pharmaceuticals. Respondent gave the
13 LPE a written statement in which he admitted the theft, and estimated the cost of the theft to be
14 \$3,651 in medicine, and to include a 120 ml bottle of promethazine-codeine syrup. Respondent
15 stated that he would conceal the bottles in his underwear and take the bottles to the central
16 console of his car when he was on break. Officers searched Respondent's car and found a 120 ml
17 of Promethazine-codeine syrup. Respondent stated that he stole the bottles because two Hispanic
18 males armed with firearms told him to steal the bottles. Respondent was arrested and taken to San
19 Joaquin County Jail.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

22 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
23 in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or
24 corruption, as set forth in paragraphs 14-16 and incorporated herein by reference.

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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 135891, issued to Mbemba Pangou Romain;

2. Ordering Mbemba Pangou Romain 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: 11/18/2021

Signature on File

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

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