

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

In the Matter of the Accusation Against:

ROSARIO DENNYS FLORES MOROYOQUI,

Pharmacy Technician Registration No. 175322,

Respondent.

Agency No. 7607

OAH No. 2023110776

DECISION AFTER REJECTION

Jennifer M. Russell, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on April 23, 2024.

Michael Brown, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (Board), Department of California, State of California. Respondent Rosario Dennys Flores Moroyoqui represented herself.

Testimony and documents were received in evidence. Pursuant to a Post-Hearing Order, the record remained open for respondent's submission of certain documents and complainant's objections, if any. Respondent submitted proof of

completion of probationary terms imposed by the California Superior Court, which is marked for identification and received in evidence as Exhibit A, and three character reference letters, which are marked for identification and received as Exhibits B, C, and D. Complainant submitted no objections. The record closed and the matter was submitted for decision on May 3, 2024.

The ALJ issued a Proposed Decision on June 3, 2024. On August 14, 2024, pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision. The Board ordered and subsequently received the transcripts and administrative record of the hearing, and thereafter issued an Order setting October 31, 2024, as the date for the submission of written argument with no new evidence allowed to be presented. Counsel for complainant timely filed written argument; no written argument was submitted on behalf of respondent.

The Board, having reviewed and considered the entire record, including the transcript and exhibits and written argument submitted by complainant, now issues this Decision After Rejection. As set forth herein, the Board agrees that the discipline imposed by the ALJ is supported by the facts, and finds the ALJ's reasoning otherwise sound and persuasive, but has determined that certain modifications to the Proposed Decision are warranted for consistency with the Board's Disciplinary Guidelines, to ensure public protection, and to correct certain nonprejudicial errors and omissions that the Board noted in the Proposed Decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 12, 2020, the Board issued Pharmacy Technician Registration number TCH 175322 to respondent. The registration, which has no prior history of

discipline, expires on July 31, 2025, unless renewed.

2. On September 26, 2023, complainant filed the Accusation alleging respondent engaged in unprofessional conduct by using alcohol in a dangerous manner and consequently incurring misdemeanor convictions for crimes substantially related to her qualifications, functions, or duties as a pharmacy technician.

3. On October 16, 2023, respondent filed a Notice of Defense requesting a hearing on the merits of the Accusation.

4. The ALJ found, and the Board agrees, that all jurisdictional requirements are satisfied.

Respondent's Misdemeanor Convictions

5. On August 5, 2021, respondent spent an eight-hour day at a spa where, among other things, she consumed "a couple of mimosa." Thereafter, respondent left the spa driving her car. A deputy sheriff from the San Bernardino County Sheriff's Department observed respondent's car speeding and conducted a traffic stop. The deputy observed respondent had blood shot eyes and blurred speech, appeared disoriented, stumbled exiting her car, and emitted an odor of alcohol from her person and breath when she spoke. When asked, respondent told the deputy she had nothing to drink. Respondent refused to submit to a breath or blood chemical test at the time of the traffic stop. Results from a subsequent test of respondent's blood for ethyl alcohol yield a mean concentration of 0.17 percent.

6. As a consequence, on June 9, 2022, in *People of the State of California v. Rosario Flores Mororoqui* [*sic*] (Super. Ct. San Bernardino County., 2022, No. MWV22004132), respondent was convicted, on her guilty plea, of driving under the

influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), and driving with a 0.08 percentage or greater blood alcohol content, to wit: 0.17 percentage, in violation of Vehicle Code section 23152, subdivision (b), misdemeanors. The court sentenced respondent to two days in San Bernardino County Jail (credit for time served) and placed respondent on three years' summary probation with terms and conditions, not to violate any law, not to drive a motor vehicle with a measurable amount of alcohol in her system, to enroll in and complete a first offender alcohol education program by December 30, 2022, and to paying fines totaling \$1,870.

Complainant's Expert's Opinion

7. Board Investigator Valarie Sakamura served as complainant's expert. Sakamura explained the functions and duties of pharmacist technicians. She testified, "They can work in retail, hospitals, jails, and long-term care facilities.....They can dispense narcotics..... They work on location with control substances, so they need good judgment." Sakamura further testified, "You don't want anyone impaired to come to work because you have controlled substances. You don't want them to divert; you don't want temptation. It's important that they are trustworthy." Sakamura opined respondent's conduct and conviction constitute unprofessional conduct.

Factors in Aggravation, Mitigation, and Rehabilitation

8. On December 5, 2022, respondent successfully completed the court-ordered first offender alcohol education program. Respondent considered the program "an eye opener." Respondent testified, "It helped I won't drive if I have a drink or two. I learned how alcohol can effect lives and destroy families."

9. Respondent testified, "I don't consume alcohol to have fun; only on rare, special occasions." Respondent last consumed alcohol in March 2024 at a celebration for her father's birthday.

10. The evidence in the record does not establish the status of respondent's court-ordered fines.

11. Respondent submitted character reference letters from her fiancé, friend, and brother. Respondent's fiancé reports respondent "has not got [*sic*] behind the vehicle to this day, you can say I am her personal driver, she bases her life around my schedule." (See Exh. B.) Respondent's friend reports respondent "confessed to the serious lack of judgement she exhibited and expressed both remorse and a strong desire to address the personal issues at the heart of the matter." The friend did not specify the "personal issues." (See Exh. C.) Respondent's brother reported that, "After the incident, [respondent] can feel how disappointed me and my parents were in her and finally came to realization that her actions have consequences and needed to stop ruining her life with her dumb and immature decisions..... Fast forward now, her life has completely changed. [Respondent] is now a homeowner, engaged, and a dog mom of two beautiful Dalmatians." (Exh. D.) All three expressed their admiration for respondent's resoluteness as she strives to better herself.

12. Currently, respondent works at a health insurer's call center checking the appropriate medications are packaged for shipment to patients and scheduling delivery dates for the medications.

13. With her fiancé, respondent purchased a home in November 2023. Their combined monthly household income is approximately \$6,000. Respondent testified they are living day-to-day at the moment, but it was hard not to make the purchase because the opportunity to do so comes only once.

Cost Award

14. The Board incurred costs of enforcement totaling \$4,906.25. In the Proposed Decision, the ALJ found that these costs are reasonable pursuant to Business and Professions Code (Code) section 125.3.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. A pharmacy technician registration is an occupational license. To obtain a registration, an applicant must complete 240 hours of instruction covering, among other things, "the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy." (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

2. The law makes plain that a pharmacy technician performs nondiscretionary tasks not requiring the type of professional judgment exercised by a pharmacist. "A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." (Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician's nondiscretionary tasks may include "(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c)

placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging.” (Cal. Code Regs., tit. 16, §1793.2.) A pharmacy technician is not authorized “to perform any act requiring the exercise of professional judgment by a pharmacist.” (Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, §1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient’s medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

3. Complainant therefore bears the burden of establishing by a preponderance of the evidence cause exists to discipline respondent’s pharmacy technician registration. (Evid. Code §115.)

4. “‘Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ (Citations.) . . . [T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is 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.) In meeting the burden of proof by a preponderance of the evidence, the complainant “must produce substantial evidence, contradicted or un-contradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)

Applicable Law

5. The Pharmacy Law authorizes discipline of a pharmacy technician for engaging in unprofessional conduct, for having been convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician, and for violating any of the provisions of the Pharmacy Law. (Bus. & Prof. Code, §§ 490, 4300, and 4301.)

6. It is unprofessional conduct for the holder of a pharmacy technician registration to administer to himself or herself alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself or herself or to the extent that the use impairs the ability to conduct with safety to the public the practice authorized by the registration. (Bus. & Prof. Code, § 4301, subd. (h).)

7. It is unprofessional conduct for the holder of a pharmacy technician registration to be convicted of a crime substantially related to the qualifications, functions, and duties of a registered pharmacy technician. (Bus. & Prof. Code, § 4301, subd. (i).)

8. A conviction or act is substantially related to the qualifications, functions or duties of a registered pharmacy technician if to a substantial degree it evidences the present or potential unfitness to perform the functions authorized by licensure in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit 16, § 1770.)

9. The record of conviction of a crime is conclusive evidence only of the fact that the conviction occurred. To fix the degree of discipline, the Board may inquire into the circumstances surrounding the commission of the crime. (Bus. & Prof. Code, §§ 493 and 4301, subd. (j).)

Cause Exists to Discipline

10. The ALJ found, and the Board agrees, that complainant has met its burden of proof. Respondent consumed alcoholic beverages to an extent that was dangerous to herself and the public. She drove a motor vehicle with a blood alcohol content equal or greater than 0.08 percent on the public roadways. Respondent was convicted of misdemeanor crimes involving her dangerous consumption of alcohol. Respondent's

conduct and resulting criminal convictions are substantially related to the duties she performs as a licensed pharmacy technician. As a pharmacy technician, respondent has access to substances that might be susceptible to use in a manner similarly dangerous to the manner in which she used alcohol. She violated the law when comporting herself in a law abiding manner is important for engendering public trust as she executes the functions of a pharmacy technician. Respondent therefore engaged in unprofessional conduct meriting the discipline of her registration. (See e.g., *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, indicating that a showing that a licensee engaged in statutorily enumerated conduct provides a basis for discipline.)

11. The ALJ found, and the Board agrees, that cause exists pursuant to Code sections 490, 4300, and 4301, subdivision (h), to discipline respondent's pharmacy technician registration, by reason of Factual Findings 5 and 6, in that respondent engaged in unprofessional conduct by consuming alcoholic beverages to an extent that was dangerous to herself or others.

12. The ALJ further found, and the Board agrees, that cause exists pursuant to Code sections 490, 4300, and 4301, subdivision (j), in conjunction with California Code of Regulations, title 16, section 1770, to discipline respondent's pharmacy technician registration, by reason of Factual Findings 5 and 6, in that respondent engaged in unprofessional conduct by incurring a conviction for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

Level of Discipline

13. A determination that legal cause exists to discipline respondent's pharmacy technician registration does not end the inquiry. Such cause may be overcome with a demonstration of rehabilitation. The Board's *A Manual of Disciplinary Guidelines and Model of Disciplinary Orders* (Rev. 2017) (*Disciplinary Guidelines*), lists

the following as examples of appropriate evidence demonstrating rehabilitative efforts and competency:

- a. Recent, dated, written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice relevant to the disciplinary proceeding, including the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by board staff.
- b. Recent, dated, letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation. Such letters and report will be subject to verification by board staff.
- c. Recent, dated, letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.) Such analyses and reports will be subject to verification by board staff.

- d. Recent, dated, laboratory analyses or drug screen reports confirming abstention from drugs and alcohol. Such analyses and reports will be subject to verification by board staff.
- e. Recent, dated physical examination/assessment report(s) by a licensed physician confirming the absence of any physical impairment that would prohibit the respondent from practicing safely. Such reports will be subject to verification by board staff.
- f. Recent, dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by board staff.
- g. Recent, dated, letters from persons familiar with respondent in either a personal or professional capacity regarding their knowledge of: the respondent's character; the respondent's rehabilitation, if any; the conduct of which the respondent is accused; or any other pertinent facts that would enable the board to better decide the case. Such letters must be signed under penalty of

perjury and will be subject to verification by board staff.

(Disciplinary Guidelines at p. 4 [A65].)

14. Respondent offered performance evaluations from persons knowledgeable about her competence as a pharmacy technician. Respondent submitted evidence of her successful completion of a court-ordered first offender program; however, she offered no letters from counselors describing or evaluating her participation in that program. Respondent's three-year summary probation concludes in 2025. There are no letters from probation officials affirming her compliance with the terms and conditions the court imposed in connection with her criminal conviction. The aggregate evidence offered at hearing suggests respondent's rehabilitative efforts are nascent and on-going.

15. The *Disciplinary Guidelines* provide that in determining an appropriate disciplinary penalty due consideration shall be given to several factors, including the nature and severity of the acts or offenses under consideration, the passage of time, actual or potential harm to the public or any consumer, prior disciplinary record, the number and variety of current violations, compliance with sentence and probationary terms, and evidence of mitigation and rehabilitation.

16. Respondent has no prior history of discipline. Respondent's operation of a motor vehicle while under the influence of alcohol is serious misconduct resulting in a two-count criminal misdemeanor conviction. Respondent's misconduct and resulting convictions are recent; they occurred less than one year ago. Such misconduct is a demonstration of poor judgment and a disregard for the law prohibiting alcohol-impaired driving. Even if respondent was not employed and working as a pharmacy technician at the time of her dangerous use of alcohol, and therefore presented no

actual or potential risk of harm to a consumer of pharmacy services, the Board need not wait until harm occurs in order to discipline respondent's pharmacy technician registration. (See e.g. *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-773 discussing *In re Kelley* (1990) 52 Cal.3d 487, 495-496.) As the court in *Griffiths* explains, the purpose of license discipline is the protection of the public, and such protection includes the prevention of future harm as well as the improvement and rehabilitation of the licensee. To delay or preclude license discipline until harm occurs disregards these purposes. It is far more desirable to discipline before a licensee harms any patient than after harm has occurred.

17. In this matter, the ALJ found, and the Board agrees, that the totality of the evidence in the record dictates placing respondent's pharmacy technician registration on probation to serve public protection as respondent continues her rehabilitation. The law favors rehabilitation. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.)

18. The Board notes that the Proposed Decision did not impose any alcohol-related probation terms. It appears that this omission may have been based on the ALJ's observation in the Proposed Decision that the evidence did not include a "counselor, therapist, or psychologist's diagnosis establishing respondent as a substance abuser requiring her to undergo regular and routine physical examination or assessment or laboratory analysis or drug screening to confirm abstention from drugs or alcohol." The Board further notes, however, that there is no authority requiring the Board to prove that respondent abuses alcohol on an ongoing basis, is dependent on alcohol, or that she otherwise suffers from alcoholism in order to impose appropriate optional alcohol-related probation terms to protect the public. Having reviewed and considered the entire record, the Board finds that, to ensure protection of the public, certain alcohol-related probation terms are

appropriate to include, as set forth in the Order.

Cost Recovery

19. A registrant found to have violated the Pharmacy Law may be directed to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

20. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [registrant] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Board, in imposing costs in such situations, must consider the registrant's subjective good faith belief in the merits of his position and the Board must consider whether or not the registrant has raised a colorable defense. The Board must also consider the registrant's ability to make payment.

21. The ALJ considered the Zuckerman factors, including respondent's household income discussed in Factual Finding 13, and determined that the Board shall recover its costs of enforcement totaling \$4,906.25. Under section 125.3, only an ALJ can order costs to be paid. Accordingly, the costs of \$4,906.25 ordered by the ALJ are imposed.

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ORDER

Pharmacy Technician Registration number TCH 175322, issued to respondent Rosario Dennys Flores Moroyoqui, is revoked; however, the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from

board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7607 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of her employer(s), and the name(s) and telephone number(s) of all of her direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s) and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the board in writing acknowledging

that the listed individual(s) has/have read the decision in case number 7607, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that they have read the decision in case number 7607 and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 7607 and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that they have read the decision in case number 7607, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

“Employment” within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician registration is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and enforcement in the amount of \$4,906.25. Respondent shall be permitted to pay these costs pursuant to a payment plan approved by the Board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be

payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician registration with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician registration shall be considered a violation of probation.

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish her registration, including any indicia of licensure issued by the board, along with a request to surrender the registration. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pocket

and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

11. Certification Prior to Resuming Work

Respondent shall be suspended, and shall not work as a pharmacy technician, until she has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that she may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires

licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be considered a violation of probation.

12. Practice Requirement—Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended

pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

13. Drug and Alcohol Testing

Respondent, at her own expense, shall participate in testing as directed by the board or its designee for the detection of alcohol, controlled substances, and dangerous drugs and/or dangerous devices. Testing protocols may include biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its designee. All testing must be pursuant to an observed testing protocol, unless respondent is informed otherwise in writing by the board or its designee. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the board or its designee.

By no later than thirty (30) days after the effective date of this decision, respondent shall have completed all of the following tasks: enrolled and registered with an approved drug and alcohol testing vendor; provided that vendor with any documentation, and any information necessary for payment by respondent; commenced testing protocols, including all required contacts with the testing vendor to determine testing date(s); and begun testing. At all times, respondent shall fully cooperate with the testing vendor, and with the board or its designee, with regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to cooperate timely shall be considered a violation of probation.

Respondent may be required to test on any day, including weekends and holidays. Respondent is required to make daily contact with the testing vendor to determine if a test is required, and if a test is required must submit to testing on the

same day.

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, respondent shall seek and receive approval from the board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, respondent shall enroll and register with the approved alternate drug testing vendor, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by respondent. During the period of absence of the area, respondent shall commence testing protocols with the alternate vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the board or its designee, or to timely enroll and register with, timely commence testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its designee may require respondent to timely provide documentation from a licensed practitioner authorized to prescribe the detected substance demonstrating that the substance was administered or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such documentation shall be provided by respondent within ten (10) days of being requested.

Any of the following shall be considered a violation of probation and shall result in respondent being immediately suspended from practice as a pharmacy technician until notified by the board in writing that she may resume practice: failure to timely complete all of the steps required for enrollment/registration with the drug testing vendor, including making arrangements for payment; failure to timely commence drug testing protocols; failure to contact the drug testing vendor as

required to determine testing date(s); failure to test as required; failure to timely supply documentation demonstrating that a detected substance was taken pursuant to a legitimate prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee shall inform respondent of the suspension and inform her to immediately leave work, and shall notify respondent's employer(s) and work site monitor(s) of the suspension.

During any such suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances.

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or

dangerous devices.

Failure to comply with any such suspension shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

14. Abstain from Drugs and Alcohol

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a necessary part of treatment. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend the number of group meetings per week or month directed by the board or its designee, which shall typically be at least one per week. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit

documentation thereof shall be considered a violation of probation.

16. Violation of Probation

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

17. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's pharmacy technician registration will be fully restored.

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This Decision shall become effective at 5:00 p.m. on January 8, 2025.

It is so ORDERED on December 9, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in cursive script, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.
Board President

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

**In the Matter of the Accusation Against:
ROSARIO DENNYS FLORES MOROYOQUI, Respondent**

Case No. 7607

OAH No. 2023110776

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The transcripts (administrative record) of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting Proposed Decision dated August 14, 2024. The California State Board of Pharmacy will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Lupe Baltazar, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or lupe.baltazar@dca.ca.gov on or before **October 31, 2024**.

It is so ORDERED on October 1, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

**In the Matter of the Accusation Against:
ROSARIO DENNYS FLORES MOROYOQUI, Respondent**

Case No. 7607

OAH No. 2023110776

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on August 14, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ROSARIO DEMMYS FLORES MOROYOQUI,

Pharmacy Technician Registration No. 175322,

Respondent.

Agency No. 7607

OAH No. 2023110776

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on April 23, 2024.

Michael Brown, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (Board), Department of California, State of California. Respondent Rosario Dennys Flores Moroyoqui represented herself.

Testimony and documents were received in evidence. Pursuant to a Post-Hearing Order, the record remained open for respondent's submission of certain documents and complainant's objections, if any. Respondent submitted proof of

completion of probationary terms imposed by the California Superior Court, which is marked for identification and received in evidence as Exhibit A, and three character reference letters, which are marked for identification and received as Exhibits B, C, and D. Complainant submitted no objections. The record closed and the matter was submitted for decision on May 3, 2024. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order staying revocation of respondent's registration with terms and conditions.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 12, 2020, the Board issued Pharmacy Technician Registration number TCH 175322 to respondent. The registration, which has no prior history of discipline, expires on July 31, 2025, unless renewed.

2. On September 26, 2023, complainant filed the Accusation alleging respondent engaged in unprofessional conduct by using alcohol in a dangerous manner and consequently incurring misdemeanor convictions for crimes substantially related to her qualifications, functions, or duties as a pharmacy technician.

3. On October 16, 2023, respondent filed a Notice of Defense requesting a hearing on the merits of the Accusation.

4. All jurisdictional requirements are satisfied.

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Respondent's Misdemeanor Convictions

5. On August 5, 2021, respondent spent an eight-hour day at a spa where, among other things, she consumed "a couple of mimosa." Thereafter, respondent left the spa driving her car. A deputy sheriff from the San Bernardino County Sheriff's Department observed respondent car speeding and conducted a traffic stop. The deputy observed respondent had blood shot eyes and blurred speech, appeared disoriented, stumbled exiting her car, and emitted an odor of alcohol from her person and breath when she spoke. When asked, respondent told the deputy she had nothing to drink. Respondent refused to submit to a breath or blood chemical test at the time of the traffic stop. Results from a subsequent test of respondent's blood for ethyl alcohol yield a mean concentration of 0.17 percent.

6. As a consequence, on June 9, 2022, in *People of the State of California v. Rosario Flores Mororoqui [sic]* (Super. Ct. San Bernardino County., 2022, No. MWV22004132), respondent was convicted, on her guilty plea, of driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), and driving with a 0.08 percentage or greater blood alcohol content, to wit: 0.17 percentage, in violation of Vehicle Code section 23152, subdivision (b), misdemeanors. The court sentenced respondent to two days in San Bernardino County Jail (credit for time served) and placed respondent on three years' summary probation with terms and conditions, not to violate any law, not to drive a motor vehicle with a measurable amount of alcohol in her system, to enroll in and complete a first offender alcohol education program by December 30, 2022, and to paying fines totaling \$1,870.

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Complainant's Expert's Opinion

7. Board Investigator Valarie Sakamura served as complainant's expert. Sakamura explained the functions and duties of pharmacist technicians. She testified, "They can work in retail, hospitals, jails, and long-term care facilities.....They can dispense narcotics..... They work on location with control substances, so they need good judgment." Sakamura further testified, "You don't want anyone impaired to come to work because you have controlled substances. You don't want them to divert; you don't want temptation. It's important that they are trustworthy." Sakamura opined respondent's conduct and conviction constitute unprofessional conduct.

Factors in Aggravation, Mitigation, and Rehabilitation

8. On December 5, 2022, respondent successfully completed the court-ordered first offender alcohol education program. Respondent considered the program "an eye opener." Respondent testified, "It helped I won't drive if I have a drink or two. I learned how alcohol can effect lives and destroy families."

9. Respondent testified, "I don't consume alcohol to have fun; only on rare, special occasions." Respondent last consumed alcohol in March 2024 at a celebration for her father's birthday.

10. The evidence in the record does not establish the status of respondent's court-ordered fines.

11. Respondent submitted character reference letters from her fiancé, friend, and brother. Respondent's fiancé reports respondent "has not got [*sic*] behind the vehicle to this day, you can say I am her personal driver, she bases her life around my schedule." (See Exh. B.) Respondent's friend reports respondent "confessed to the

serious lack of judgement she exhibited and expressed both remorse and a strong desire to address the personal issues at the heart of the matter.” The friend did not specify the “personal issues.” (See Exh. C.) Respondent’s brother reported that, “After the incident, [respondent] can feel how disappointed me and my parents were in her and finally came to realization that her actions have consequences and needed to stop ruining her life with her dumb and immature decisionsFast forward now, her life has completely changed. [Respondent] is now a homeowner, engaged, and a dog mom of two beautiful Dalmatians.” (Exh. D.) All three expressed their admiration for respondent’s resoluteness as she strives to better herself.

12. Currently, respondent works at a health insurer’s call center checking the appropriate medications are packaged for shipment to patients and scheduling delivery dates for the medications.

13. With her fiancé, respondent purchased a home in November 2023. Their combined monthly household income is approximately \$6,000. Respondent testified they are living day-to-day at the moment, but it was hard not to make the purchase because the opportunity to do so comes only once.

Cost Award

14. The Board incurred costs of enforcement totaling \$4,906.25. These costs are reasonable pursuant to Business and Professions Code (Code) section 125.3.

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LEGAL CONCLUSIONS

Standard and Burden of Proof

1. A pharmacy technician registration is an occupational license. To obtain a registration, an applicant must complete 240 hours of instruction covering, among other things, "the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy." (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

2. The law makes plain that a pharmacy technician performs nondiscretionary tasks not requiring the type of professional judgment exercised by a pharmacist. "A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." (Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician's nondiscretionary tasks may include "(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging." (Cal. Code Regs., tit. 16, §1793.2.) A pharmacy technician is not authorized "to perform any act requiring the exercise of professional judgment by a pharmacist." (Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, §1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and

interpreting prescriptions, interpreting a patient's medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

3. Complainant therefore bears the burden of establishing by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration. (Evid. Code §115.)

4. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations.) . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is 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.) In meeting the burden of proof by a preponderance of the evidence, the complainant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

Applicable Law

5. The Pharmacy Law authorizes discipline of a pharmacy technician for engaging in unprofessional conduct, for having been convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician, and for violating any of the provisions of the Pharmacy Law. (Bus. & Prof. Code, §§ 490, 4300, and 4301.)

6. It is unprofessional conduct for the holder of a pharmacy technician registration to administer to himself or herself alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself or herself or to the extent that the use impairs the ability to conduct with safety to the public the practice authorized by the registration. (Bus. & Prof. Code, § 4301, subd. (h).)

7. It is unprofessional conduct for the holder of a pharmacy technician registration to be convicted of a crime substantially related to the qualifications, functions, and duties of a registered pharmacy technician. (Bus. & Prof. Code, § 4301, subd. (f).)

8. A conviction or act is substantially related to the qualifications, functions or duties of a registered pharmacy technician if to a substantial degree it evidences the present or potential unfitness to perform the functions authorized by licensure in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit 16, § 1770.)

9. The record of conviction of a crime is conclusive evidence only of the fact that the conviction occurred. To fix the degree of discipline, the Board may inquire into the circumstances surrounding the commission of the crime. (Bus. & Prof. Code, §§ 493 and 4301, subd. (f).)

Cause Exists to Discipline

10. Complainant has met its burden of proof. Respondent consumed alcoholic beverages to an extent that was dangerous to herself and the public. She drove a motor vehicle with a blood alcohol content equal or greater than 0.08 percent on the public roadways. Respondent was convicted of misdemeanor crimes involving her dangerous consumption of alcohol. Respondent's conduct and resulting criminal convictions are substantially related to the duties she performs as a licensed pharmacy technician. As a pharmacy technician, respondent has access to substances that might be susceptible to use in a manner similarly dangerous to the manner in which she used alcohol. She violated the law when comporting herself in a law abiding manner is important for engendering public trust as she executes the functions of a pharmacy

technician. Respondent therefore engaged in unprofessional conduct meriting the discipline of her registration. (See e.g., *Sula v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, indicating that a showing that a licensee engaged in statutorily enumerated conduct provides a basis for discipline.)

11. Cause exists pursuant to Code sections 490, 4300, and 4301, subdivision (h), to discipline respondent's pharmacy technician registration, by reason of Factual Findings 5 and 6, in that respondent engaged in unprofessional conduct by consuming alcoholic beverages to an extent that was dangerous to herself or others.

12. Cause exists pursuant to Code sections 490, 4300, and 4301, subdivision (j), in conjunction with California Code of Regulations, title 16, section 1770, to discipline respondent's pharmacy technician registration, by reason of Factual Findings 5 and 6, in that respondent engaged in unprofessional conduct by incurring a conviction for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

Level of Discipline

13. A determination that legal cause exists to discipline respondent's pharmacy technician registration does not end the inquiry. Such cause may be overcome with a demonstration of rehabilitation. The Board's *A Manual of Disciplinary Guidelines and Model of Disciplinary Orders* (Rev. 2017) (*Disciplinary Guidelines*), lists the following as examples of appropriate evidence demonstrating rehabilitative efforts and competency:

- a. Recent, dated, written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the

respondent's current competence in the practice relevant to the disciplinary proceeding, including the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by board staff.

- b. Recent, dated, letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation. Such letters and report will be subject to verification by board staff.
- c. Recent, dated, letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.) Such analyses and reports will be subject to verification by board staff.
- d. Recent, dated, laboratory analyses or drug screen reports confirming abstention from drugs and alcohol. Such analyses and reports will be subject to verification by board staff.

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- e. Recent, dated physical examination/assessment report(s) by a licensed physician confirming the absence of any physical impairment that would prohibit the respondent from practicing safely. Such reports will be subject to verification by board staff.

- f. Recent, dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by board staff.

- g. Recent, dated, letters from persons familiar with respondent in either a personal or professional capacity regarding their knowledge of: the respondent' character; the respondent's rehabilitation, if any; the conduct of which the respondent is accused; or any other pertinent facts that would enable the board to better decide the case. Such letters must be signed under penalty of perjury and will be subject to verification by board staff.

(Disciplinary Guidelines at p. 4 [A65].)

14. Respondent offered performance evaluations from persons knowledgeable about her competence as a pharmacy technician. Respondent submitted evidence of her successful completion a court-ordered first offender program; however, she offered no letters from counselors describing or evaluating her participation in that program. There is no counselor, therapist, or psychologist's diagnosis establishing respondent as a substance abuser requiring her to undergo regular and routine physical examination or assessment or laboratory analysis or drug screening to confirm abstention from drugs or alcohol. Respondent's three-year summary probation concludes in 2025. There are not letters from probation officials affirming her compliance with the terms and conditions the court imposed in connection with her criminal conviction. The aggregate evidence offered at hearing suggests respondent's rehabilitative efforts are nascent and on-going.

15. The *Disciplinary Guidelines* provides that in determining an appropriate disciplinary penalty due consideration shall be given to several factors, including the nature and severity of the acts or offenses under consideration, the passage of time, actual or potential harm to the public or any consumer, prior disciplinary record, the number and variety of current violations, compliance with sentence and probationary terms, and evidence of mitigation and rehabilitation.

16. Respondent has no prior history of discipline. Respondent's operation of a motor vehicle while under the influence of alcohol is serious misconduct resulting in a two-count criminal misdemeanor conviction. Respondent's misconduct and resulting convictions are recent; they occurred less than one year ago. Such misconduct is a demonstration of poor judgment and a disregard for the law prohibiting alcohol-impaired driving. Even if respondent was not employed and working as a pharmacy technician at the time of his dangerous use of alcohol, and therefore presented no

actual or potential risk of harm to a consumer of pharmacy services, the Board need not wait until harm occurs in order to discipline respondent's pharmacy technician registration. (See e.g. *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-773 discussing *In re Kelley* (1990) 52 Cal.3d 487, 495-496.) As the court in *Griffiths* explains, the purpose of license discipline is the protection of the public, and such protection includes the prevention of future harm as well as the improvement and rehabilitation of the licensee. To delay or preclude license discipline until harm occurs disregards these purposes. It is far more desirable to discipline before a licensee harms any patient than after harm has occurred.

17. In this matter, the totality of the evidence in the record dictates placing respondent's pharmacy technician registration on probation to serve public protection as respondent continues her rehabilitation. The law favors rehabilitation. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.)

Cost Recovery

18. A registrant found to have violated the Pharmacy Law may be directed to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

19. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [registrant] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of

the discipline imposed." (*Ibid.*) The Board, in imposing costs in such situations, must consider the registrant's subjective good faith belief in the merits of his position and the Board must consider whether or not the registrant has raised a colorable defense. The Board must also consider the registrant's ability to make payment.

20. Having considered the Zuckerman factors, including respondent's household income discussed in Factual Finding 13, the Board shall recover its costs of enforcement totaling \$4,906.25.

ORDER

Pharmacy Technician Registration number THC 175322, issued to respondent Rosario Dennys Flores Moroyoqui, is revoked; however, the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment

- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview

without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 6306 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of her employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s)

and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7607, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that they have read the decision in case number 7607 and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 7607 and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

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Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that they have read the decision in case number 7607, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician registration is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

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7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and enforcement in the amount of \$4,906.25. Respondent shall be permitted to pay these costs pursuant to a payment plan approved by the Board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician registration with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician registration shall be considered a violation of probation.

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

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10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish her registration, including any indicia of licensure issued by the board, along with a request to surrender the registration. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

11. Certification Prior to Resuming Work

Respondent shall be suspended, and shall not work as a pharmacy technician, until she has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that he may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be considered a violation of probation.

12. Practice Requirement—Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

13. Violation of Probation

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry

out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's pharmacy technician registration will be fully restored.

DATE: **06/03/2024**

Jennifer Russell

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 7607

12 **ROSARIO DENNYS FLORES**
13 **MOROYOQUI**
14 **8919 Satinwood St**
15 **Fontana, CA 92335**

ACCUSATION

16 **Pharmacy Technician Registration No. TCH**
17 **175322**

Respondent.

18
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 (Board), Department of Consumer Affairs.

22 2. On or about February 12, 2020, the Board issued Pharmacy Technician Registration
23 Number TCH 175322 to Rosario Dennys Flores Moroyoqui (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 July 31, 2025, unless renewed.

26 **JURISDICTION**

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions of Substantially Related Crimes)**

3 11. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
4 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
5 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially
6 related to the qualifications, functions or duties of a pharmacy technician, as follows:

7 a. On or about June 9, 2022, Respondent was convicted of two misdemeanor counts
8 of violating Vehicle Code sections 23152(a) [drive while under the influence of alcohol]
9 and 23152(b) [drive with a 0.08% or greater blood alcohol content (BAC), to wit, 0.17%) in the
10 criminal proceeding entitled *The People of the State of California v. Rosario Flores Mororoqui*
11 (Super Ct. San Bernardino County, 2022, No. MWV22004132). The Court sentenced
12 Respondent to two days in jail, placed her on three years of summary probation, and ordered her
13 to complete an AB541 alcohol education program.

14 b. The circumstances of the arrest leading to the conviction are that on or about
15 August 5, 2021, 1656 hours, Respondent drove a vehicle while under the influence of alcoholic
16 beverages. Respondent emitted the strong odor of an alcoholic beverage from her vehicle and
17 breath and was extremely agitated and argumentative. Respondent was also disoriented, had
18 blood shot eyes, and slurred speech. As a law enforcement officer was writing a citation,
19 Respondent called 911, got out of her vehicle, stumbled into lanes of traffic, and almost got hit by
20 oncoming vehicles. Respondent repeatedly ignored officer commands to stay in her vehicle and
21 to stop calling 911. Found in Respondent's vehicle were five empty alcoholic beverage bottles
22 and a bag of marijuana paraphernalia. Respondent's BAC test result was 0.17%.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Dangerous Use of Alcohol)**

25 12. Respondent is subject to disciplinary action under sections 4300, and 4301,
26 subdivision (h), on the grounds of unprofessional conduct, in that on or about August 5, 2021,
27 Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious

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1 to herself or others. Complainant refers to and by this reference incorporates the allegations set
2 forth above in paragraph 11 inclusive, as though set forth fully.

3 **PRAYER**

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

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 175322,
7 issued to Rosario Dennys Flores Moroyoqui;

8 2. Ordering Rosario Dennys Flores Moroyoqui to pay the Board of Pharmacy the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3; and,

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

12
13
14 DATED: September 26, 2023

Sodergren,
Anne@DCA

 Digitally signed by Sodergren,
Anne@DCA
Date: 2023.09.26 17:40:32 -07'00'

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

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