

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

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

**BENJAMIN TRAN, Respondent**

**Pharmacy Technician Registration No. TCH 96736**

**Agency Case No. 7699**

**OAH No. 2024041110**

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

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



Seung W. Oh, Pharm.D.  
Board President

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

**BENJAMIN TRAN,**

**Pharmacy Technician Registration No. TCH 96736**

**Respondent.**

**Agency Case No. 7699**

**OAH No. 2024041110**

**PROPOSED DECISION**

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on October 7, 2024, by videoconference.

Deputy Attorney General Aspasia A. Papavassiliou represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy.

Respondent Benjamin Tran represented himself.

The record closed and the matter was submitted for decision on October 7, 2024.

## FACTUAL FINDINGS

1. On December 22, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration Number TCH 96736 to respondent Benjamin Tran. The registration was in full force and effect at all relevant times and will expire on November 30, 2025.<sup>1</sup> There is no prior license discipline.

2. On February 2, 2024, complainant Anne Sodergren, in her official capacity as Executive Officer of the Board, signed an accusation against respondent seeking to impose discipline on respondent based on his criminal convictions, his dangerous use of a controlled substance, and his unprofessional conduct. Complainant also seeks costs for the enforcement of this matter. Respondent filed a notice of defense, and this hearing followed.

### Convictions

3. On June 14, 2023, in the Superior Court of California, County of Sonoma, respondent was convicted on a no contest plea to the following eleven felony offenses: three counts of transferring/manufacturing/importing an assault weapon (Penal Code, § 30600, subd. (a)); five counts of possession of an assault weapon (Penal Code, § 30605, subd. (a)); one count of possession or knowingly transporting a machine gun (Penal Code, § 32625, subd. (a)); one count of possession of a silencer

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<sup>1</sup> The accusation states that respondent's pharmacy technician registration expired November 30, 2023.

(Penal Code, § 33410); and one count of possession of a short barreled shotgun (Penal Code, § 33215).

On August 11, 2023, respondent was sentenced to serve 60 days in jail, with two days credit for time served. He was placed on two years' formal probation on conditions that he not own firearms and ammunition; submit to warrantless search and seizure at any time of the day or night; submit to random chemical testing; not possess or use any alcohol or controlled substances; stay out of places where alcohol is the primary item of sale; maintain employment or enroll in an educational program; forfeit all firearms, 3D printer, and software; not own or possess any 3D printers; forfeit passwords; not use marijuana; complete a substance abuse program as directed by his probation officer; and pay court fines, fees, and restitution. Respondent was also ordered to complete 58 days in a work release program.

4. The facts and circumstances leading to respondent's conviction are that, on April 22, 2022, the Santa Rosa Police Department was notified by the United States Department of Homeland Security that it had intercepted an international package addressed to respondent containing an illegal gun modification. Respondent was arrested at his home. A search warrant was executed, and several items were confiscated, including suspected fentanyl and smoking accessories, controlled substances including steroids and other unidentified narcotics, five assault weapons, three high-capacity magazines, eight additional firearms (three of which were registered to respondent), and a 3D printer and computer software to manufacture weapons and magazines.

Respondent admitted to the police that he had been a fentanyl addict for several years and that he had gone through significant withdrawals when he stopped using narcotics. He admitted to ordering the illegal gun modification, a silencer, and

steroids and other illegal controlled substances through the internet. And respondent admitted to 3D printing firearms, assembling and manufacturing them into functional firearms parts, and to 3D printing high-capacity magazines.

## **Conduct**

5. Complainant's expert, Joshua Lee, Pharm. D., opined that respondent was not qualified to retain his pharmacist technician registration due to his fentanyl use and his firearms-related conduct.

Dr. Lee explained that pharmacies have or have access to controlled substances, including fentanyl, a "Schedule II" drug.<sup>2</sup> Noting that fentanyl is "highly addictive" and respondent's fentanyl addiction history, Dr. Lee opined that having respondent employed by a Board-licensed pharmacy would likely cause harm to both respondent and to the pharmacy.

Dr. Lee also testified about respondent's conduct manufacturing firearms, opining that such conduct demonstrated a lack of good judgment and a disregard for the laws and regulations by a pharmacy technician, which requires licensees not engage in conduct that involves moral turpitude.

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<sup>2</sup> Under the Controlled Substances Act (21 U.S.C. § 801 et seq.), "Schedule II" drugs are controlled substances that have a high potential for abuse, have a currently accepted medical use in treatment, and, when abused, may lead to severe psychological or physical dependence. (18 U.S.C. § 812(b)(4); 21 C.F.R. § 1308.12.)

## **Respondent's Evidence**

6. Respondent understands the severity of the charges and his convictions. He wishes that he could "take it back." Respondent sincerely regrets what he has done and has learned from his mistakes.

7. Respondent stated that it was "compulsion" that led him to the 3D printing of firearms. He stated that, at the time he started 3D printing firearms in 2012, it was not illegal to do so. He reported that he would have stopped 3D printing firearms had he known about, or read up on, the laws.

8. Respondent testified that he has never hurt anyone, and that he has never presented himself as a risk or concern to others. Respondent also reported that he has never diverted any drugs during the 13 years he worked as a pharmacy technician. Since 2023, he has been employed as a delivery driver for Amazon.

9. Respondent is in compliance with the terms of his criminal probation, which is scheduled to end in August 2025. He has completed the work release program. Stating that he no longer has a physical dependence on fentanyl, and with his probation officer's agreement, respondent has not attended any substance abuse-related support programs. Respondent has stayed away from drinking alcohol, fentanyl, and other bad influences. Instead, he attends religious meetings and reads the Bible. Respondent is "thankful to be alive."

10. At hearing, respondent provided no letters or witnesses regarding rehabilitation or mitigation. However, as part of the criminal proceeding, respondent provided several character letters, as well as multiple drug testing reports showing negative drug test results. Respondent also appeared sober at hearing.

## **Costs**

11. The Board seeks to recover a total of \$6,057.25 in enforcement costs to prosecute this matter. These costs are supported by a declaration and billing records that describe the tasks performed and time spent by each identified legal professional of the Department of Justice, and the method of calculating the cost, in compliance with California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, the above prosecution costs are found to be reasonable.

## **LEGAL CONCLUSIONS**

1. The burden of proof is on complainant to show cause for discipline by a preponderance of the evidence. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453; Evid. Code, § 500.) It is respondent's burden to show mitigation and rehabilitation by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

### **First Cause for Discipline (General Unprofessional Conduct)**

2. The Board may impose discipline on a pharmacy technician for engaging in unprofessional conduct "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." (Bus. & Prof. Code, § 4301, subd. (f).) Professional misconduct is substantially related to the qualifications, functions or duties of a registered pharmacy technician "if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770.)

Respondent engaged in conduct involving moral turpitude by possessing and manufacturing assault weapons (Factual Findings 3 and 4). "Just as possession of an unregistered firearm is a crime of moral turpitude because such weapons are normally used for criminal purposes, assault firearms are also typically used to commit crimes, and as the Legislature has outlined, cause greater harm to the public than general firearms, and thus possession of same should be considered a crime of moral turpitude." (*People v. Gabriel* (2012) 206 Cal.App.4th 450, 458.)

Cause for discipline exists under Business and Professions Code section 4301, subdivision (f).

### **Second Cause for Discipline (Dangerous Use of Controlled Substance)**

3. The Board may impose discipline on a pharmacy technician for "administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license." (Bus. & Prof. Code, § 4301, subd. (h).)

As discussed in Factual Finding 4, respondent used fentanyl, a controlled substance, in a manner that was injurious to himself and potentially to others. Cause for discipline exists under Business and Professions Code section 4301, subdivision (h).

### **Third Cause for Discipline (Substantially Related Conviction)**

4. The Board may impose discipline on a pharmacy technician for having been convicted of a crime substantially related to the qualifications, functions, or

duties of a registered pharmacy technician. (Bus. & Prof. Code, § 4301, subd. (I).) 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.)

As set forth in Factual Findings 3 through 5, respondent’s criminal convictions demonstrate “unfitness to perform the functions” of a pharmacy technician “in a manner consistent with the public health, safety, or welfare.” Cause for discipline exists under Business and Professions Code section 4301, subdivision (I).

## **Determination of Discipline**

5. “Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (Bus. & Prof. Code, § 4001.1.)

6. The Board’s Disciplinary Guidelines: A Manual of Disciplinary Guidelines and Model Disciplinary Orders (Guidelines) must be considered in determining the appropriate level of discipline. (Cal. Code Regs., tit. 16, § 1760; Guidelines, rev. Apr. 2024.) Factors to be considered include: the actual or potential harm to the public or to a consumer; prior disciplinary records and warnings; the number, nature, and severity of the acts, offenses, or crimes under consideration; any aggravating, mitigating, or rehabilitation evidence; compliance with the terms of any criminal sentence, parole, or probation; the overall criminal record; whether a matter has been expunged; the time passed since the offense occurred; whether the conduct was

intentional or negligent, demonstrated incompetence, or whether there was knowledge of or knowing participation in the conduct; the financial benefit from the misconduct; other licenses held and their history; and the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

A respondent is permitted to present mitigating circumstances and has the burden of demonstrating any rehabilitation or corrective measures taken. Factors include: recent, dated, written statements or performance evaluations from persons who have knowledge of respondent's work experience; recent, dated, written statements from licensed treatment providers; recent, dated letters describing respondent's participation in support groups; recent, dated drug screen reports; recent, dated physical examination reports; recent, dated letters from probation or parole officers; and recent, dated letters from persons familiar with respondent in either a professional or personal capacity.

As stated in the Guidelines, the Board believes that, for pharmacy technicians, "an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and that if revocation is not imposed that a minimum [] level of discipline should be imposed." In cases involving criminal convictions that involve alcohol, dangerous drugs and/or dangerous devices or controlled substances, the Guidelines provide for a minimum discipline of stayed revocation with 90 days actual suspension and three to five years of probation.

7. Respondent has demonstrated some rehabilitation, and has recognized the wrongfulness of his past actions, an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) However, respondent remains on criminal probation until August 2025, and any rehabilitation must be weighed

against the expectation that he must act in an exemplary way while still on probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Respondent's criminal convictions and his use of controlled substances were serious, recent, and harmful to himself and the public. Given the circumstances and considering the whole record, revocation of respondent's pharmacy technician registration is appropriate.

## **Costs**

8. The Board may recover its reasonable costs of investigation and enforcement. (Bus. & Prof. Code, § 125.3.) As set forth in Legal Conclusions 2 through 4, respondent has violated statutes and regulations related to the practice of pharmacy. As set forth in Factual Finding 11, complainant has established that \$6,057.25 in costs to prosecute this action was reasonably incurred.

9. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court sets forth standards by which a licensing board must exercise its discretion to reduce or eliminate costs awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Considering these factors, there is no basis to reduce the costs in this matter.

## ORDER

1. Pharmacy Technician Registration Number TCH 96736, issued to respondent Benjamin Tran, is revoked.
2. Respondent shall relinquish his registration to the Board within 10 days of the effective date of this decision.
3. Respondent may not reapply or petition the Board for reinstatement of his revoked registration for three years from the effective date of this decision.
4. As a condition precedent to reinstatement of his revoked registration, respondent shall reimburse the Board its costs of enforcement in the amount of \$6,057.25. That amount shall be paid in full prior to the reinstatement of his registration unless otherwise ordered by the Board.

DATE: 10/24/2024



[Mario Choi \(Oct 24, 2024 08:51 PDT\)](#)

MARIO M. CHOI

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 ASPASIA A. PAPAVALASSILOU  
Deputy Attorney General  
4 State Bar No. 196360  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 879-0818  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 7699

13 **BENJAMIN TRAN**  
14 **8413 Kastanias Way**  
**Elk Grove, CA 95758**

**ACCUSATION**

15 **Pharmacy Technician License No. TCH**  
16 **96736**

17 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, Department of Consumer Affairs.

22 2. On or about December 22, 2009, the Board of Pharmacy issued Pharmacy Technician  
23 License Number TCH 96736 to Benjamin Tran (Respondent). The Pharmacy Technician License  
24 expired on November 30, 2023, and has not been renewed.

25 **JURISDICTION**

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



1 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
3 dismissing the accusation, information, or indictment.

### 4 **REGULATORY PROVISIONS**

5 8. California Code of Regulations, title 16, section 1770, subdivision (a), states:

6 For the purpose of denial, suspension, or revocation of a personal or facility  
7 license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the  
8 Business and Professions Code, a crime, professional misconduct, or act shall be  
9 considered substantially related to the qualifications, functions or duties of the  
10 practice, profession, or occupation that may be performed under the license type  
11 sought or held if to a substantial degree it evidences present or potential unfitness of  
12 an applicant or licensee to perform the functions authorized by the license in a  
13 manner consistent with the public health, safety, or welfare.

### 14 **COST RECOVERY**

15 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licensee found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case, with failure of the licensee to comply subjecting the license to not being  
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
20 included in a stipulated settlement.

### 21 **FACTUAL ALLEGATIONS**

22 10. On or about June 14, 2023, in a criminal proceeding entitled *The People of the State*  
23 *of California vs. Benjamin Tran*, in Superior Court of California, County of Sonoma, Case No.  
24 SCR753726-1, Respondent pled no contest to and was convicted of the following eleven felony  
25 offenses: three counts of Manufacture/Distribute//Etc. Any Assault Weapon (Penal Code § 30600,  
26 subd. (a)); five counts of Possession of Any Assault Weapon (Penal Code § 30605, subd. (a)); one  
27 count of Possession of a Machine Gun (Penal Code § 32625, subd. (a)), one count of Possession  
28 of a Silencer (Penal Code § 33410), and one count of Possession of a Short Barreled Rifle or  
Shotgun (Penal Code § 33215). Consequently, on August 11, 2023, Respondent was placed on  
two years of probation, ordered to serve 58 days in jail, prohibited from owning firearms and  
ammunition, ordered to complete a substance abuse program, ordered to pay all court fines, fees,  
and restitution, and ordered to complete 58 days in a work release program. The substance abuse

1 program was ordered because Respondent claimed his lack of judgment was due to his fentanyl  
2 addiction, which helped fuel his obsessive desire to build firearm parts. The circumstances  
3 leading to the convictions are described in paragraph 11, below.

4 11. On or about April 22, 2022, an officer with the Santa Rosa Police Department was  
5 notified by the United States Department of Homeland Security that their agency had intercepted  
6 an international package addressed to Respondent. The package contained an illegal gun  
7 modification. On or about April 26, 2022, the Santa Rosa police officer received the package  
8 from the Department of Homeland Security. Santa Rosa police officers then conducted a  
9 "controlled delivery" to Respondent's house. After the package was delivered, Respondent and  
10 his girlfriend were taken into custody. The girlfriend had in her purse a loaded handgun that was  
11 registered to Respondent. Following the execution of a search warrant, police confiscated several  
12 items including, but not limited to: suspected fentanyl and smoking accessories, controlled  
13 substances including steroids and other unidentified narcotics, five assault weapons, three high-  
14 capacity magazines, eight additional firearms (only three were registered to Respondent), and a  
15 3D printer and computer software to manufacture weapons and magazines. Respondent made  
16 several admissions to police, as described in paragraph 12, below.

17 12. Respondent admitted to being a fentanyl addict for several years and said he went  
18 through significant withdrawals when not taking the drug. Respondent admitted to having used  
19 fentanyl that day. Respondent admitted he had ordered an illegal Glock switch and other illegal  
20 firearms accessories. Respondent admitted he had ordered steroids and other illegal controlled  
21 substances online. Finally, Respondent admitted he had used the 3D printer to make firearms  
22 parts and magazines.

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

#### 24 **(General Unprofessional Conduct)**

25 13. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
26 action on the grounds of general unprofessional conduct, in violation of Code section 4301,  
27 subdivision (f), and California Code of Regulations, title 16, section 1770, subdivision (a). The  
28 circumstances are described in paragraphs 10-12, above.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Controlled Substance)**

3 14. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
4 action on the grounds of unprofessional conduct, in that Respondent used a controlled substance  
5 in a dangerous matter, in violation of Code section 4301, subdivision (h). The circumstances are  
6 described in paragraphs 10-12, above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Substantially Related Conviction)**

9 15. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
10 action on the grounds of unprofessional conduct, in that Respondent was convicted of a crime  
11 substantially related to the qualifications, functions, and duties of a pharmacy technician, in  
12 violation of Code section 4301, subdivision (l). The circumstances are described in paragraphs  
13 10-12, above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
16 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 17 1. Revoking or suspending Pharmacy Technician License Number TCH 96736, issued  
18 to Benjamin Tran;
- 19 2. Ordering Benjamin Tran to pay the Board of Pharmacy the reasonable costs of the  
20 investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3; and,
- 22 3. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: 2/2/2024

25 **Sodergren,**  
**Anne@DCA**  
 ANNE SODERGREN  
 Executive Officer  
 Board of Pharmacy  
 Department of Consumer Affairs  
 State of California  
*Complainant*

Digitally signed by  
 Sodergren, Anne@DCA  
 Date: 2024.02.02 22:05:07  
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