

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

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

**THOMAS RICHARD NOVER**

**Pharmacy Technician Registration No. TCH 8273**

**Respondent**

**Agency Case No. 6821**

**OAH No. 2020050686**

**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 March 19, 2021.

It is so ORDERED on February 17, 2021.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Greg Lippe  
Board President

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**PROPOSED DECISION**

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on December 1 and 2, 2020.

Cristina Felix, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Thomas Richard Nover (respondent) represented himself.

Oral and documentary evidence was received. The surveillance videos referenced during the hearing were presented in two formats: one CD and one USB flash drive. The CD and USB flash drive were collectively marked and admitted as Exhibit 12. The record was closed and the matter was submitted for decision on December 2, 2020.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On February 28, 2020, complainant filed the Accusation in her official capacity. On March 13, 2020, respondent filed a Notice of Defense to request a hearing on the merits of the Accusation.

2. On July 7, 1993, the Board issued Pharmacy Technician Registration Number TCH 8273 to respondent. The Registration was in full force and effect at all times relevant to the charges in the Accusation, and will expire on March 31, 2021, unless renewed.

### **Drug Classification**

3. Norco is the brand name for the combination narcotic Hydrocodone and Acetaminophen (HC/APAP), which is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), and categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

## **Garden Plaza Pharmacy**

4. Garden Plaza Pharmacy (Pharmacy) is an independent retail pharmacy. Stanley B. Widre was the owner of the Pharmacy from 1995 until he sold the business in November 2019. At all relevant times, Widre was licensed as a pharmacist in California and Nevada and was the pharmacist-in-charge (PIC) at the Pharmacy. After he sold the business in November 2019, Widre continued to work at the Pharmacy to assist the new owner until March 2020, when he decided to stop working and retire, in part, because of the COVID-19 pandemic.

5. At all relevant times, the Pharmacy employed other pharmacists who worked part-time and filled in for PIC Widre on days he did not work. Those pharmacists were Pejman P. Javaheri, Evan R. Cooper, and Parisa Rafailzadeh. Ms. Rafailzadeh worked part-time at the Pharmacy for 2.5 years until March 2019. She has been licensed in California as a pharmacist since 1996 and is also currently licensed in Nevada.

6. Lidia Pena is currently employed as a pharmacy technician at the Pharmacy. She has worked at the Pharmacy since 2012. Ms. Pena has been licensed in California as a pharmacy technician since 1998.

7. Respondent worked for PIC Widre for over 30 years. He worked as a pharmacy technician at the Pharmacy when PIC Widre acquired the business in 1995. According to PIC Widre, he offered to pay for respondent's education if he went to pharmacy school, but respondent had no ambition or interest to advance his career.

8. At all relevant times, Ms. Pena and respondent were both licensed as pharmacy technicians. A pharmacy is limited to having only one pharmacy technician on duty. When Ms. Pena and respondent worked at the Pharmacy on the same day,

Ms. Pena served as the pharmacy technician and respondent functioned as a clerk. However, when Ms. Pena was not present at the Pharmacy, such as when she went to lunch, respondent could, if necessary, function as a pharmacy technician during her absence because of his license.

### **Theft of HC/APAP Tablets**

9. Between January 15 and February 13, 2019, respondent, while employed at the Pharmacy, diverted approximately 1,500 tablets of HC/APAP 10-325 mg. PIC Widre, Ms. Pena, and Ms. Rafailzadeh testified at the hearing regarding the circumstances of the theft. Their testimonies were supported by their written statements to the Board and other documentary and video evidence and, therefore, credible.

10. At all relevant times, the Pharmacy maintained a perpetual, real-time inventory for controlled substances. Any amount dispensed was automatically deducted from the balance in the database. The Pharmacy's purchases of drugs were added to the database before the drugs were placed on the shelves. The Pharmacy was required to conduct a "hard inventory" of all Schedule II controlled substances on a quarterly basis, which it did.

11. On January 15, 2019, PIC Widre had spinal surgery and was hospitalized. He was off work for two to three weeks after the surgery but would occasionally visit the Pharmacy. PIC Widre did not return to work at the Pharmacy until late February 2019. Ms. Rafailzadeh was one of the relief pharmacists who filled in during PIC Widre's absence.

12. On January 16, 2019, Ms. Pena noticed the Pharmacy was short on HC/APAP. She thought she might have made a mistake in entering the correct count

into the database when the Pharmacy received its shipment of the medication. On January 17, 2019, Ms. Pena noted another shortage. Ms. Pena informed PIC Widre, who was in the hospital, of the shortage. PIC Widre instructed Ms. Pena to keep a close watch on the count. Over the next few days, the shortages continued.

13. The Pharmacy had video surveillance cameras. When Ms. Pena discovered the shortages of HC/APAP, she attempted but was unable to access the video surveillance footage on the Pharmacy's computer. The security company was called and adjustments were made to the video surveillance system and cameras.

14. On February 14, 2019, Ms. Pena and Ms. Rafailzadeh reviewed the video surveillance footage, which showed respondent taking bottles of Norco as he walked by the shelves where the bottles were stored, and then placing the bottles in a paper bag containing his lunch and then stapling the bag closed, or he was seen concealing bottles in the pocket of his pharmacy coat. The area where respondent kept his lunch bag was for packaging the prescriptions and placing them in the "will call" area for customer pick-up. His lunch bag was not kept in the dispensing area, where prescriptions were filled and verified by the pharmacist. At the Pharmacy, controlled substances, such as generic Norco, were stored on shelves directly across from the dispensing area. Bottles of generic Norco were stored on the fourth shelf, where respondent was seen on the videos removing bottles as he walked by. The videos confirmed respondent was stealing medication from the Pharmacy.

15. Ms. Pena notified PIC Widre that the surveillance videos showed respondent was stealing bottles of generic Norco. On February 15, 2019, PIC Widre, who was still recovering from his surgery and had not yet returned to work, came to the Pharmacy to speak with respondent. Ms. Pena was working at the Pharmacy that day. PIC Widre confronted respondent about the thefts and showed him the

surveillance videos. Respondent denied it was him in the videos. PIC Widre terminated respondent's employment, paid him for his hours, and told respondent to leave the store.

16. On February 25, 2019, the Board received a Report of Theft or Loss of Controlled Substances (Report of Theft) filed by PIC Widre. The Pharmacy reported a loss of 1,500 tablets of 10-325mg of HC/APAP due to "Employee Pilferage." (Exh. 5.) The Report of Theft indicated the theft was verified by video evidence on February 15, 2019, and the pharmacy technician suspected of committing the theft was fired.

17. Ms. Pena performed the inventory that determined 1,500 tablets of HC/APAP 10-325 mg were missing. The Pharmacy purchased HC/APAP in bottles of 100 tablets. The last inventory of HC/APAP was taken on January 3, 2019, at 4:30 p.m., and showed the Pharmacy had 993 tablets of HC/APAP 10-325 mg. The total number of bottles ordered and received by the Pharmacy between January 4 and February 13, 2019, was 82 bottles, which equated to 8,200 tablets. Therefore, the Pharmacy's total inventory of HC/APAP 10-325 mg as of February 13, 2019, was 9,193 tablets. Between January 4 and February 13, 2019, the Pharmacy dispensed a total of 7,164 tablets. The difference between the total inventory (9,193 tablets) and the amount dispensed (7,164 tablets) was 2,029 tablets. However, the number of tablets on the Pharmacy's shelves on February 14, 2019, at 9:42 a.m., was 527 tablets. Thus, as of February 14, 2019, the Pharmacy had a shortage of 1,502 tablets (the equivalent of 15 bottles of 100 tablets each). (See Exh. 6, p. AGO-64.)

18. By letter dated February 25, 2019, the Board acknowledged receipt of the Report of Theft and requested the pharmacist-in-charge to provide additional documentation and information regarding the theft. On April 8, 2019, the Board received PIC Widre's response containing the requested information and documents,

including a copy of the wholesaler's sales record for HC/APAP sold to the Pharmacy; the Pharmacy's inventory and drug utilization records for HC/APAP 10-325 mg; a flash drive containing multiple surveillance videos; and written statements by PIC Widre, Ms. Pena, and Ms. Rafailzadeh. (See Exh. 6, pp. AGO-61 to 64; Exhs. 9-11.)

## **Board's Investigation**

19. Simin Samari is an Inspector who has been employed by the Board for 15 years. She has been licensed in California as a pharmacist since 1989. Inspector Samari conducted the Board's investigation in this matter. She obtained and reviewed documents, conducted interviews, and visited the Pharmacy on June 12 and 24, 2019. Inspector Samari prepared a written report dated July 10, 2019, that summarized the findings of the investigation. Inspector Samari testified at the hearing regarding the investigation.

20. As part of her investigation, Inspector Samari interviewed respondent on June 24, 2019, at a Starbucks near his residence. Respondent provided Inspector Samari with a statement he wrote and signed in her presence. In his written statement, respondent denied that he stole "any Norco or cash from the Pharmacy" and claimed he was being "used as a scape goat to cover up a pharmacist, with a serious opioid addiction." (Exh. 13, p. AGO-94.)

21. During his interview with Inspector Samari, respondent denied taking bottles of HC/APAP off the shelf, placing it in his lunch bag, and stapling the bag closed. Respondent blamed the loss of HC/APAP on PIC Widre. He claimed PIC Widre worked while under the influence of pain relievers. Respondent claimed that, on one occasion, PIC Widre passed out in the Pharmacy. He showed Inspector Samari a picture of a man who appeared to be PIC Widre laying on the floor in the Pharmacy.



When Inspector Samari told respondent that the loss of HC/APAP occurred during the time PIC Widre was recovering from his surgery, respondent still blamed the losses on PIC Widre.

22. (A) Respondent's assertion that PIC Widre was to blame for the missing 1,500 tablets of Norco was not supported by any credible evidence and given no weight. On June 24, 2019, after her interview with respondent, Inspector Samari made a follow up visit to the Pharmacy. She reviewed PIC Widre's prescription profile for the past year. He had been routinely prescribed various medications for pain, including HC/APAP, by his pain specialist group and had multiple surgeries.

(B) During the June 24, 2019 visit, Inspector Samari spoke to PIC Widre regarding the occasion when he was laying on the floor of the Pharmacy. PIC Widre explained that he mistakenly took his night medications before coming to work that day. Once at the Pharmacy, he felt dizzy and laid on the floor for a few hours until he felt better. The Pharmacy is located in a medical building with internists and pain management practitioners. PIC Widre told Inspector Samari that one of the doctors in the building checked on him twice to make sure he was doing well. Ms. Pena, who was at the Pharmacy, confirmed PIC Widre's statements regarding the incident.

23. Inspector Samari reviewed the surveillance videos from the Pharmacy. Inspector Samari testified that respondent's conduct shown in the videos, such as placing medications in his pharmacy coat pocket and concealing medications in his lunch bag, are not part of the duties of a pharmacy technician. The videos, along with statements of pharmacy staff, established that respondent would take the Norco bottles during times when other pharmacy staff left the area, such as to go to lunch or use the restroom, or when their attention was focused elsewhere and not on respondent.

24. (A) Inspector Samari conducted her own audit to confirm the number of HC/APAP tablets missing from the Pharmacy. Inspector Samari reviewed the Pharmacy's inventory records, as well as records she obtained from Cardinal Health regarding its sales of HC/APAP to the Pharmacy.

(B) Inspector Samari reviewed records and data for the period January 3 to April 4, 2019, and found the Pharmacy had a shortage of 1,623 tablets of HC/APAP as of April 4, 2019. The Pharmacy had reported a shortage of 1,500 tablets as of February 14, 2019. Regarding the discrepancy of 123 tablets between her audit and the Pharmacy's audit, Inspector Samari noted her audit period extended to April 4, 2019, and it was also possible the Pharmacy had information that she did not have.

(C) Inspector Samari noted that PIC Widre was completing a quarterly inventory reconciliation every three months. When she reviewed the Pharmacy's records for a few of the past quarters, Inspector Samari found that PIC Widre was able to reconcile all discrepancies. Inspector Samari determined the 123-pill discrepancy was due to one prescription that was omitted from her investigation. Inspector Samari, through her audit, confirmed the number of HC/APAP tablets missing from the Pharmacy was 1,500 tablets.

25. Based on her investigation, Inspector Samari concluded that respondent diverted 1,500 tablets of HC/APAP, 10-325 mg, from the Pharmacy in violation of the pharmacy laws. (See Exh. 4, p. AGO-51.)

### **Respondent's Testimony and Contentions**

26. Respondent testified at the hearing. He claimed the shortage of HC/APAP was due to Ms. Pena incorrectly entering information in the Pharmacy's inventory system. He also offered various explanations to justify his conduct shown in

the surveillance videos. His explanations, however, were easily refuted by the video and documentary evidence, as well as the more credible testimonies of complainant's witnesses.

27. (A) Regarding the video showing him placing Norco bottles in a paper bag, respondent claimed that a friend of PIC Widre had asked respondent to put aside two bottles of Norco (200 pills) for his monthly prescription, and the friend would come by in the next few days from Palm Springs to pick up the medications. Respondent testified this was not unusual because the friend had done this before. Respondent admitted he never told Ms. Pena about setting aside pills for A.S.

(B) Respondent's explanation was uncorroborated and not persuasive and, therefore, insufficient to establish mitigation or excuse for his misconduct. The more credible testimonies of complainant's witnesses established that if a patient's prescription was for a full bottle of medication, a prescription label would need to be affixed to the bottle and then verified by the pharmacist. Inspector Samari explained that a prescription for three bottles of Norco is not an unusual prescription but the bottles must be labeled if dispensed for a patient. Further, Inspector Samari confirmed that all inventory discrepancies at the Pharmacy were accounted for in her audit, which would have accounted for a patient prescription for 200 pills of Norco, as respondent claimed existed for A.S. Inspector Samari was advised of no such prescription for A.S.

28. Respondent's explanation for the video showing him placing a bottle of Norco in his pharmacy coat pocket was similarly not credible or sufficient to establish mitigation or excuse for his conduct. Respondent claimed that the pharmacist had asked him where the Norco was stored. Respondent claimed he put the bottle of Norco in his pocket because he thought it would be funny to pull the bottle from his pocket before giving it to the pharmacist. Inspector Samari explained there is no part

of a pharmacy technician's duties that requires or allows the concealment of medications in the technician's pocket. Respondent offered an explanation that, in other videos, he was merely doing a "quick count" of the Norco bottles as he walked by the shelves. This explanation was easily refuted by the video evidence showing respondent taking Norco bottles from the shelf, not merely counting them, as he walked by.

## **Cost Recovery**

29. The Board incurred reasonable costs in the investigation (\$4,144.25) and enforcement (\$9,613.75) of the case, in the total amount of \$13,758. (Exh. 3.)

30. Respondent is not currently employed. After he was fired from the Pharmacy, he worked as a salesman for Keyes Honda in Van Nuys. He worked for five months as a salesman until he was laid off on March 23, 2020, due to the COVID-19 pandemic. Respondent has not worked as a pharmacy technician since being fired by the Pharmacy.

31. Respondent is married. His wife works part-time at the Disney Store and earns \$200 per month. His parents give him \$1,500 per month to pay the mortgage so respondent and his wife can keep their house. Respondent was receiving unemployment benefits, which have now ended. Respondent and his wife rely on her salary, respondent's parents, and their savings to pay their monthly expenses, which include their mortgage, a car payment, cable, and utilities. Respondent's wife had cancer and the family is currently paying off medical bills with a total outstanding balance due of \$6,000.

## LEGAL CONCLUSIONS

### Legal Principles

1. The standard of proof in this proceeding is a preponderance of the evidence. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) The Board bears the burden of proving cause for disciplinary action against respondent's pharmacy technician registration by a preponderance of the evidence. (Evid. Code, § 500.)

2. Pursuant to Business and Professions Code section 4300, subdivision (a), every license issued by the Board may be suspended or revoked.

3. Business and Professions Code section 4301 provides, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct ..... Unprofessional conduct includes, but is not limited to, any of the following:

[¶.....¶]

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

[¶ . . . ¶]

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

[¶ . . . ¶]

(o) Violating or attempting to violate, directly or indirectly, . . . any provision or term of this chapter or of the applicable federal or state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

4. Business and Professions Code section 4059, subdivision (a), provides, in pertinent part: "A person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

5. Health and Safety Code section 11170 states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

6. Health and Safety Code section 11350, subdivision (a), provides that every person who possesses certain controlled substances specified in the statute "unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year ....."

### **Cause for Disciplinary Action**

7. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (j), for unprofessional conduct, in that

between January 15 and February 13, 2019, while working at the Pharmacy, respondent diverted at least 1,500 tablets of HC/APAP 10-325 mg from the Pharmacy, in violation of statutes regulating controlled substances and dangerous drugs, based on Factual Findings 9-25 and Legal Conclusion 8.

8. By diverting 1,500 tablets of HC/APA 10-325 mg, respondent violated Business and Professions Code section 4059, subdivision (a), by furnishing a dangerous drug to himself without a valid prescription; Health and Safety Code section 11170, by furnishing a controlled substance to himself; and Health and Safety Code section 11350, subdivision (a), by possessing a controlled substance without a valid, written prescription.

9. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (o), for unprofessional conduct, in that between January 15 and February 13, 2019, while working at the Pharmacy, respondent diverted at least 1,500 tablets of HC/APAP 10-325 mg from the Pharmacy, in violation of the laws and regulations governing pharmacy, based on Factual Findings 9-25 and Legal Conclusion 8.

10. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (f), for unprofessional conduct, in that between January 15 and February 13, 2019, while working at the Pharmacy, respondent engaged in conduct involving dishonesty, fraud, and deceit when he diverted at least 1,500 tablets of HC/APAP 10-325 mg from the Pharmacy, based on Factual Findings 9-25 and Legal Conclusion 11.

11. The preponderance of the evidence established that respondent diverted 1,500 tablets of HC/APAP, 10-325 mg, by misappropriating his employer's inventory,

which is inherently dishonest, fraudulent and deceitful. While working at the Pharmacy, respondent concealed the bottles of HC/APAP tablets in his paper lunch bag or in the pocket of his pharmacy coat. He took the bottles of HC/APAP tablets when other pharmacy staff left the dispensing area or when their attention was focused elsewhere. Respondent's theft was confirmed by the Pharmacy's video surveillance system.

12. "The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners." (*Ettlinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

13. The Board has developed Disciplinary Guidelines (Rev. 2/2017) (Guidelines), which are incorporated by reference in the Board's regulations at California Code of Regulations, title 16, section 1760.

14. The Guidelines classify categories of violations and recommended penalties as Category I, II, III, or IV. The categories are arranged in ascending order from the least serious (Category I) to the most serious (Category IV), although any single violation in any category, or any combination of violations in one or more categories, may merit revocation. For pharmacy technicians, "the board believes an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and that if revocation is not imposed that a minimum Category III level of discipline should be imposed." (Guidelines, p. 5.)

15. (A) Category II discipline is recommended for violations "with serious potential for harm, as well as for violations involving disregard for public safety or the laws or regulations pertaining to pharmacy and/or to dispensing or distributing of dangerous drugs and/or dangerous devices or controlled substances, violations that



reflect on ethics, competence, or diligence.....” (Guidelines, p. 6.) The maximum penalty is revocation, and the minimum penalty is a stayed revocation with three years’ probation. (*Id.*)

(B) Category III discipline is recommended for violations “where potential for harm is greater, more imminent, or more serious than it is for Category II violations, as well as for violations that involve knowingly or willfully violating laws or regulations pertaining to pharmacy and/or to the dispensing or distributing of dangerous drugs and/or dangerous devices or controlled substances.....” (Guidelines, p. 7.) The maximum penalty is revocation, and the minimum penalty is a stayed revocation with three to five years’ probation. (*Id.*)

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

17. The Guidelines provide that a respondent is permitted to present mitigating circumstances at a hearing and has the burden of demonstrating any rehabilitative or corrective measures he or she has taken. (Guidelines, p. 4.) The respondent must produce “admissible evidence in the form required by law.” (*Id.*)

18. Respondent’s theft of 1,500 Norco tablets from the Pharmacy is appropriately classified as a Category II violation, rather than a Category III violation.

Respondent's misconduct is serious, but there was no evidence that it rose to the level of posing a risk of greater or more imminent harm to justify classification as a Category III violation. Category II is also more appropriate because it includes violations that reflect on the licensee's ethics. Here, respondent stole medications from his long-term employer, PIC Widre, through deceitful conduct that included concealing medication bottles in his lunch bag and in his pharmacy coat pocket. Respondent repeatedly denied his misconduct and blamed other pharmacy staff for the missing medications, even in the face of clear video evidence that easily refuted his denials.

19. Respondent bears the particular burden of establishing rehabilitation sufficient to compel continued licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) He failed to meet that burden. Respondent's theft of generic Norco from the Pharmacy was intentional, and his explanations were not persuasive or sufficient to mitigate or excuse his conduct. Respondent has expressed no remorse or acknowledged responsibility for his conduct, even after being confronted with video evidence of his theft. He insists he is not the person shown in the surveillance videos taking and concealing bottles of generic Norco, even with Ms. Pena and Ms. Rafailzadeh identifying him as the person in the video. Respondent's failure to acknowledge and admit responsibility for his conduct raises concerns about his honesty and trustworthiness to perform the duties authorized by his pharmacy technician registration. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

20. Based on the foregoing, the revocation of respondent's pharmacy technician registration is warranted to ensure public protection. (Factual Findings 1-25; Legal Conclusions 1-19.)

## **Cost Recovery**

21. Pursuant to Business and Professions Code section 125.3, subdivision (a), a licensee found to have committed a violation of the applicable licensing law may be directed to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

22. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court enumerated several factors that a licensing agency must consider when assessing costs. An agency must not assess the full costs where it would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

23. Cause exists to direct respondent to pay the reasonable cost of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3. The reasonable cost of the investigation and enforcement of this matter is \$13,758. (Factual Finding 29.) However, based on respondent's current financial circumstances, and his inability to work as a pharmacy technician after the

revocation of his technician registration, respondent shall be required to pay the \$13,758 cost recovery as a condition precedent to obtaining reinstatement of his revoked registration or issuance of a new registration or license from the Board. (Factual Findings 30-31.)

## ORDER

1. Pharmacy Technician Registration Number TCH 8273, issued to respondent Thomas Richard Nover, is revoked. Respondent shall relinquish his Technician Registration to the Board within 10 days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of his revoked Technician Registration for three years from the effective date of this decision.

2. As a condition precedent to reinstatement of his revoked Technician Registration, or the issuance of a new registration or license by the Board, respondent shall reimburse the Board for its costs of investigation and enforcement in the amount of \$13,758. Said amount shall be paid in full prior to the reinstatement of his Technician Registration, or the issuance of a new registration or license, unless otherwise ordered by the board.

DATE: Jan 4, 2021

*Erlinda Shrenger*  
Erlinda Shrenger (Jan 4, 2021 21:10 PST)

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 6821

13 **THOMAS RICHARD NOVER**  
14 **14600 Water Lily Ct.**  
**Santa Clarita, CA 91387**

**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
16 **8273**

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 July 7, 1993, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 8273 to Thomas Richard Nover (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 March 31, 2021, unless renewed.

26 ///

27 ///

28 ///

**JURISDICTION**

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

4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300.1 of the Code states:

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

**STATUTORY PROVISIONS**

6. Section 4300, subdivision (a), of the Code states:

“ Every license issued may be suspended or revoked.”

7. Section 4301 of the Code states:

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

(a) Procurement of a license by fraud or misrepresentation.

(b) Incompetence.

(c) Gross negligence.

...

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

...

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

...

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

6 ...”

7 8. Section 4022 of the Code states:

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

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

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

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

19 9. Section 4059, subdivision (a) of the Code states in pertinent part:

20 “A person may not furnish any dangerous drug, except upon the prescription of  
21 a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
22 pursuant to Section 3640.7. A person may not furnish any dangerous device, except  
23 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
24 naturopathic doctor pursuant to Section 3640.7.”

25 10. Section 11170 of Health & Safety code states:

26 “No person shall prescribe, administer, or furnish a controlled substance for  
27 himself.”

28 11. Section 11350, subdivision (a), of Health & Safety code states in pertinent part:

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

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1 **COST RECOVERY**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **DEFINITIONS**

9 13. Norco is the brand name for the combination narcotic, Hydrocodone and  
10 Acetaminophen, and is a Schedule II controlled substance pursuant to Health and Safety Code  
11 section 11055 (b)(1) (I) and is categorized as a dangerous drug pursuant to Business and  
12 Professions Code section 4022.

13 **FACTUAL ALLEGATIONS**

14 14. On and between January 15 and February 13, 2019, Respondent was employed as a  
15 registered pharmacy technician at Garden Plaza Pharmacy.

16 15. On or about February 25, 2019, the Board received a DEA 106 report by Pharmacist-  
17 in-Charge Stanley Widre at the pharmacy indicating a loss of 1,500 tablets of  
18 Hydrocodone/APAP 10/325 mg from the pharmacy.

19 16. Between January 15 and February 13, 2019, Respondent, while working at Garden  
20 Plaza Pharmacy, diverted 1,500 tablets of Hydrocodone/APAP 10/325 mg from the pharmacy.  
21 Respondent was terminated from the pharmacy following the loss.

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1 **CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 17. Respondent is subject to disciplinary action under Business and Professions Code  
4 sections 4301, subdivisions (o), (f) and (j), and 4059 and Health and Safety Code Sections 11170  
5 and 11350, subdivision (a), in that between January 15 and February 13, 2019, Respondent  
6 engaged in unprofessional conduct while working at Garden Plaza Pharmacy, when he diverted  
7 1,500 tablets of Hydrocodone/APAP 10/325 mg from the pharmacy. Complainant hereby  
8 incorporates allegations in paragraphs 14 through 16 as though set forth fully herein.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 8273,  
13 issued to Thomas Richard Nover;
- 14 2. Ordering Thomas Richard Nover to pay the Board of Pharmacy the reasonable costs  
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
16 section 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

18  
19  
20 DATED: February 28, 2020



21 ANNE SODERGREN  
22 Executive Officer  
23 Board of Pharmacy  
24 Department of Consumer Affairs  
25 State of California  
26 *Complainant*

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