

1 ROB BONTA
Attorney General of California
2 NANCY A. KAISER
Supervising Deputy Attorney General
3 STEPHEN D. SVETICH
Deputy Attorney General
4 State Bar No. 272370
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6306
6 Facsimile: (916) 731-2126
Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

Case No. 7274

13 **RENEE ELISSA MONTES**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.
17

18 **PARTIES**

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

22 2. On or about June 23, 2021, the Board received an application for a Pharmacy
23 Technician Registration from Renee Elissa Montes (Respondent). On or about May 28, 2021,
24 Renee Elissa Montes certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on February 8,
26 2022.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 4. Section 485 states:

6 Upon denial of an application for a license under this chapter or Section 496,
7 the board shall do either of the following:

8 (a) File and serve a statement of issues in accordance with Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
10 Government Code.

11 (b) Notify the applicant that the application is denied, stating (1) the reason for
12 the denial, and (2) that the applicant has the right to a hearing under Chapter 5
13 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
14 Government Code if written request for hearing is made within 60 days after service
15 of the notice of denial. Unless written request for hearing is made within the 60-day
16 period, the applicant's right to a hearing is deemed waived.

17 Service of the notice of denial may be made in the manner authorized for
18 service of summons in civil actions, or by registered mail addressed to the applicant
19 at the latest address filed by the applicant in writing with the board in his or her
20 application or otherwise. Service by mail is complete on the date of mailing.

21 **STATUTORY PROVISIONS**

22 5. Section 4202.6 states:

23 Notwithstanding Section 480, the board may deny an application for licensure
24 under this chapter if the applicant has been convicted of a crime or subjected to
25 formal discipline that would be grounds for denial of a federal registration to
26 distribute controlled substances.

27 6. Section 4300, subdivision (c), states, in pertinent part

28 The board may refuse a license to any applicant guilty of unprofessional
conduct. The board may, in its sole discretion, issue a probationary license to any
applicant for a license who is guilty of unprofessional conduct and who has met all
other requirements for licensure. . . .

7. Section 4301 states, in pertinent part:

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 includes, but is not limited to, any of the following:

. . . .

1 (h) The administering to oneself, of any controlled substance, or the use of
2 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
3 dangerous or injurious to oneself, to a person holding a license under this chapter, or
4 to any other person or to the public, or to the extent that the use impairs the ability of
5 the person to conduct with safety to the public the practice authorized by the license.

6

7 (l) The conviction of a crime substantially related to the qualifications,
8 functions, and duties of a licensee under this chapter. The record of conviction of a
9 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
10 States Code regulating controlled substances or of a violation of the statutes of this
11 state regulating controlled substances or dangerous drugs shall be conclusive
12 evidence of unprofessional conduct. In all other cases, the record of conviction shall
13 be conclusive evidence only of the fact that the conviction occurred. The board may
14 inquire into the circumstances surrounding the commission of the crime, in order to
15 fix the degree of discipline or, in the case of a conviction not involving controlled
16 substances or dangerous drugs, to determine if the conviction is of an offense
17 substantially related to the qualifications, functions, and duties of a licensee under
18 this chapter. A plea or verdict of guilty or a conviction following a plea of nolo
19 contendere is deemed to be a conviction within the meaning of this provision. The
20 board may take action when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal or when an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent order
23 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her
24 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
25 dismissing the accusation, information, or indictment.

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27 **FEDERAL STATUTES**

28 8. Title 21 United States Code section 801, subdivision (2), states:

The illegal importation, manufacture, distribution, and possession and improper use
of controlled substances have a substantial and detrimental effect on the health and general
welfare of the American people.

9. Title 21 United States Code section 823 states, in pertinent part:

. . . .

(b) Distributors of controlled substances in schedule I or II. The Attorney General
shall register an applicant to distribute a controlled substance in schedule I or II unless he
determines that the issuance of such registration is inconsistent with the public interest. In
determining the public interest, the following factors shall be considered:

. . . .

(2) compliance with applicable State and local law;

. . . .

1 (5) such other factors as may be relevant to and consistent with the public health and
2 safety.

3

4 (e) Distributors of controlled substances in schedule III, IV, or V. The Attorney
5 General shall register an applicant to distribute controlled substances in schedule III, IV, or
6 V, unless he determines that the issuance of such registration is inconsistent with the public
7 interest. In determining the public interest, the following factors shall be considered:

8

9 (2) compliance with applicable State and local law;

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11 (5) such other factors as may be relevant to and consistent with the public health and
12 safety.

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14 (h) Applicants for distribution of list I¹ chemicals. The Attorney General shall
15 register an applicant to distribute a list I chemical unless the Attorney General determines
16 that registration of the applicant is inconsistent with the public interest. Registration under
17 this subsection shall not be required for the distribution of a drug product that is exempted
18 under clause (iv) or (v) of section 102(39)(A) [21 USCS § 802(39)(A)]. In determining the
19 public interest for the purposes of this subsection, the Attorney General shall consider—

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21 (2) compliance by the applicant with applicable Federal, State, and local law;

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23 (5) such other factors as are relevant to and consistent with the public health and
24 safety.

25

26 (k) Definition. In this section, the phrase “factors as may be relevant to and
27 consistent with the public health and safety” means factors that are relevant to and
28 consistent with the findings contained in section 101 [21 USCS § 801].

10. Title 21 United States Code section 824 states, in pertinent part:

A registration pursuant to section 823 of this title to manufacture, distribute, or
dispense a controlled substance or a list I chemical may be suspended or revoked by the
Attorney General upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this
subchapter or subchapter II;

¹ The term “list I chemical”, referred to in this section, is defined in 21 USCS § 802(34), which states, in pertinent part: The term “list I chemical” means a chemical specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is important to the manufacture of the controlled substances . . .

1 (2) has been convicted of a felony under this subchapter or subchapter II or any other
2 law of the United States, or of any State, relating to any substance defined in this
3 subchapter as a controlled substance or a list I chemical;

4 (3) has had his State license or registration suspended, revoked, or denied by
5 competent State authority and is no longer authorized by State law to engage in the
6 manufacturing, distribution, or dispensing of controlled substances or list I chemicals or
7 has had the suspension, revocation, or denial of his registration recommended by
8 competent State authority;

9 (4) has committed such acts as would render his registration under section 823 of this
10 title inconsistent with the public interest as determined under such section; or

11 (5) has been excluded (or directed to be excluded) from participation in a program
12 pursuant to section 1320a-7(a) of Title 42.

13 **REGULATORY PROVISIONS**

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

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

22 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

23 12. Clonazepam is a Schedule IV controlled substance as defined in Health and Safety
24 Code section 11057(d)(7) and a dangerous drug according to Business and Professions Code
25 section 4022.

26 13. Gabapentin is categorized as a dangerous drug pursuant to Business and Professions
27 Code section 4022.

28 14. Oxycodone is a schedule II controlled substance as defined in Health and Safety Code
section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code
section 4022.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Violation of State Law – Conviction of a Crime)

15 15. Respondent's application is subject to denial under section 4202.6, in conjunction
16 with Title 21 United States Code sections 823, subdivisions (b)(2), (e)(2) and/or (h)(2), and 824,
17 subdivision (a), in that on or about July 26, 2018, Respondent failed to comply with state law and
18 was convicted of a crime, as follows:

1 a. On or about April 26, 2018, Respondent was convicted of one misdemeanor count of
2 violating Vehicle Code section 23152(b) [drive with an equal to or greater than 0.08% blood
3 alcohol content (BAC), to wit, 0.2% BAC] in the criminal proceeding entitled *The People of the*
4 *State of California v. Renee Elissa Montes* (Super. Ct. San Bernardino County, 2018, No.
5 MWV18012856). The Court sentenced Respondent to a suspended 10 days in jail, placed her on
6 36 months of summary probation, and ordered her to complete a Nine-Month DUI Program.

7 b. The circumstances of the arrest leading to the conviction are that on or about April 2,
8 2018, police officers responded to a single vehicle traffic collision. Upon contact with
9 Respondent, officers smelled an odor of alcohol from her breath and person, and observed her to
10 have slow and slurred speech, be incoherent and confused, swaying and slightly stumbling to the
11 side while standing and walking slowly. Respondent admitted to taking medications of “Oxy”
12 and Gabapentin prior to driving, and that at the time of the collision, she felt tired and off-
13 balance. Respondent submitted to blood tests that resulted in positive tests for Clonazepam and
14 Oxycodone and a 0.268% BAC.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Improper Use of Controlled Substances)**

17 16. Respondent's application is subject to denial under section 4202.6, in conjunction
18 with Title 21 United States Code sections 801, subdivision (2), 823, subdivisions (b)(5), (e)(5)
19 and/or (h)(5), and 824, subdivision (a), in that on or about April 2, 2018, Respondent improperly
20 used controlled substances, grounds for denial of a federal registration to distribute controlled
21 substances. On or about April 2, 2018, Respondent improperly administered to herself controlled
22 substances, Clonazepam and Oxycodone, and alcoholic beverages, testing positive for both. In
23 addition, Respondent drove a vehicle while under the influence of the improper combination of
24 controlled substances and alcohol and caused a vehicle collision. Complainant refers to and by
25 this reference incorporates the allegations set forth above in paragraph 15, subdivision (b),
26 inclusive, as though set forth fully herein.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 (Unprofessional Conduct –

3 **Criminal Conviction for Driving Under the Influence)**

4 17. Respondent's application is subject to denial under sections 4300, subdivision (c),
5 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16,
6 section 1770, in that Respondent committed acts of unprofessional conduct when she was
7 convicted of a crime substantially related to the qualifications, functions, and duties of a
8 pharmacy technician. Complainant refers to and by this reference incorporates the allegations set
9 forth above in paragraph 15, inclusive, as though set forth fully herein.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

11 (Dangerous Use of Controlled Substances and / or Alcoholic Beverages)

12 18. Respondent's application is subject to denial under sections 4300, subdivision (c),
13 and 4301, subdivision (h), in that Respondent committed acts of unprofessional conduct for the
14 dangerous use of controlled substances and / or alcoholic beverages to the extent, or in a manner,
15 as to be dangerous or injurious to herself and the public. Complainant refers to and by this
16 reference incorporates the allegations set forth above in paragraph 16, inclusive, as though set
17 forth fully herein.

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PRAYER

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

1. Denying the application of Renee Elissa Montes for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/6/2022

Signature on File

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

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