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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 Statement of Issues  
13 Against:

Case No. 6894

14 **CYNTHIA ARLENE ESPARZA**

**STATEMENT OF ISSUES**

15 **Pharmacy Technician Registration**  
16 **Applicant**

17 Respondent.

18  
19 **PARTIES**

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

23 2. On or about June 6, 2019, the Board received an application for a Pharmacy  
24 Technician Registration from Cynthia Arlene Esparza (Respondent). On or about May 29, 2019,  
25 Cynthia Arlene Esparza certified under penalty of perjury to the truthfulness of all statements,  
26 answers, and representations in the application. The Board denied the application on November  
27 1, 2019.  
28

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 (Code) unless  
4 otherwise indicated.

5 **STATUTORY PROVISIONS**

6 4. Code section 480 states, in pertinent part:

7 (a) A board may deny a license regulated by this code on the grounds that the  
8 applicant has one of the following:

9 (1) Been convicted of a crime. A conviction within the meaning of this section  
10 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.  
11 Any action that a board is permitted to take following the establishment of a  
12 conviction may be taken when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal, or when an order granting probation is made  
suspending the imposition of sentence, irrespective of a subsequent order under the  
provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

13 (3) (A) Done any act that if done by a licentiate of the business or profession in  
question, would be grounds for suspension or revocation of license.

14 (B) The board may deny a license pursuant to this subdivision only if the crime  
15 or act is substantially related to the qualifications, functions, or duties of the business  
or profession for which application is made.

16 (b) Notwithstanding any other provision of this code, a person shall not be  
17 denied a license solely on the basis that he or she has been convicted of a felony if he  
or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing  
with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
18 convicted of a misdemeanor if he or she has met all applicable requirements of the  
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
19 person when considering the denial of a license under subdivision (a) of Section 482.

20 (c) Notwithstanding any other provisions of this code, a person shall not be  
21 denied a license solely on the basis of a conviction that has been dismissed pursuant  
to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a  
conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of  
22 the Penal Code shall provide proof of the dismissal.

23 5. Code section 492 states, in pertinent part:

24 Notwithstanding any other provision of law, successful completion of any  
25 diversion program under the Penal Code, or successful completion of an alcohol and  
26 drug problem assessment program under Article 5 (commencing with Section  
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
27 agency established under Division 2 (commencing with Section 500) of this code, or  
any initiative act referred to in that division, from taking disciplinary action against a  
licensee or from denying a license for professional misconduct, notwithstanding that  
28 evidence of that misconduct may be recorded in a record pertaining to an arrest . . .

1           6.       Code section 4202(c) states:

2                 The board shall conduct a criminal background check of the applicant to  
3                 determine if an applicant has committed acts that would constitute grounds for denial  
4                 of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of  
5                 Division 1.5.

6           7.       Code section 4300(c) states, in pertinent part:

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

11          8.       Code section 4301 states, in pertinent part:

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

15                ...

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

21                ...

22                (k) The conviction of more than one misdemeanor or any felony involving the  
23                use, consumption, or self-administration of any dangerous drug or alcoholic beverage,  
24                or any combination of those substances.

25                (l) The conviction of a crime substantially related to the qualifications,  
26                functions, and duties of a licensee under this chapter. The record of conviction of a  
27                violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
28                States Code regulating controlled substances or of a violation of the statutes of this  
29                state regulating controlled substances or dangerous drugs shall be conclusive  
30                evidence of unprofessional conduct. In all other cases, the record of conviction shall  
31                be conclusive evidence only of the fact that the conviction occurred. The board may  
32                inquire into the circumstances surrounding the commission of the crime, in order to  
33                fix the degree of discipline or, in the case of a conviction not involving controlled  
34                substances or dangerous drugs, to determine if the conviction is of an offense  
35                substantially related to the qualifications, functions, and duties of a licensee under this  
36                chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
37                contendere is deemed to be a conviction within the meaning of this provision. The  
38                board may take action when the time for appeal has elapsed, or the judgment of  
39                conviction has been affirmed on appeal or when an order granting probation is made  
40                suspending the imposition of sentence, irrespective of a subsequent order under  
41                Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
42                guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
43                dismissing the accusation, information, or indictment.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Convictions)**

3 9. Respondent's application is subject to denial under Code sections 480(a)(1), 4300  
4 subdivision (c), and 4301 subdivision (l) in that Respondent was convicted of crimes that are  
5 substantially related to the qualifications, functions, and duties of a licensee, as follows:

6 a. On or about March 16, 2016, in the case of *People v. Cynthia Arlene Esparza*,  
7 (Super. Ct. Merced County, 2016, Case No. 15CR-04893), Respondent was convicted by the  
8 Court on her guilty plea of violating Vehicle Code sections 23152(b) (driving a vehicle with a  
9 blood alcohol level of .08% or higher), a misdemeanor. The circumstances of the crime were that  
10 on or about February 1, 2015, an officer from the Merced Police Department conducted a traffic  
11 stop on a vehicle for making a wide turn into the bicycle lane and drifting between lanes in  
12 Merced. Upon contact with the driver of the vehicle, identified as Respondent, the officer noticed  
13 a smell of alcohol emitting from Respondent's vehicle and that Respondent had slurred speech.  
14 Respondent failed to properly complete the Field Sobriety Tests ("FST"), and refused to submit to  
15 a preliminary alcohol screening test. As a result of Respondent's performance on the FSTs,  
16 Respondent was arrested and taken to Merced County Jail. Respondent's blood alcohol measured  
17 0.20% and 0.19%.

18 b. On or about April 28, 2016, in the case of *People v. Cynthia Esparza*, (Super.  
19 Ct. Merced County, 2016, Case No. 15-CR-04906), Respondent was convicted by the Court on  
20 her plea of no contest of violating Vehicle Code sections 23152(b) (driving a vehicle with a blood  
21 alcohol level of .08% or higher) and 14601.5(a) (driving on a suspended license), both  
22 misdemeanors. The circumstances of the crime were that on or about May 28, 2015, an officer  
23 with the California Highway Patrol conducted a traffic stop on a vehicle being operated without a  
24 front license plate in Merced. Upon contact with the driver of the vehicle, identified as  
25 Respondent, the officer noticed a smell of alcohol emitting from the vehicle. Respondent  
26 performed poorly on the FSTs, and refused to submit to a preliminary alcohol screening test. As a  
27 result of Respondent's performance on the FSTs Respondent was arrested and taken to Merced  
28 County Jail. Respondent's blood alcohol measured 0.15%, 0.22%, and 0.22%.

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**SECOND CAUSE FOR DENIAL OF APPLICATION**

**(Dangerous Use of Alcohol)**

10. Respondent's application is subject to denial under Code sections 480, subdivision (a)(3)(A), 4300 subdivision (c), and 4301, subdivision (h), in that Respondent used alcoholic beverages in a manner as to be dangerous to herself, other persons, or the public, as set forth more particularly in paragraph 9.

**THIRD CAUSE FOR DENIAL OF APPLICATION**

**(Multiple Convictions Involving Alcohol)**

11. Respondent's application is subject to denial under Code sections 480, subdivision (a)(3)(A), 4300 subdivision (c), and 4301, subdivision (k), in that Respondent was convicted of more than one misdemeanor involving the use, consumption, or self-administration of alcohol, as set forth more particularly in paragraph 9.

**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 Cynthia Arlene Esparza for a Pharmacy Technician Registration;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: February 4, 2020



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

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