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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 7444

13 **OSCAR ERNESTO ARTIGA**

STATEMENT OF ISSUES

14 **Pharmacy Technician License Applicant**

15 Respondent.

16 **PARTIES**

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

19 2. On or about July 1, 2022, the Board of Pharmacy (Board) received an application for
20 a Pharmacy Technician License from Oscar Ernesto Artiga (Respondent). On or about April 29,
21 2022, Oscar Ernesto Artiga certified under penalty of perjury to the truthfulness of all statements,
22 answers, and representations in the application. The Board denied the application on December
23 27, 2022.

24 **JURISDICTION AND STATUTORY PROVISIONS**

25 3. This Statement of Issues is brought before the Board under the authority of the
26 following laws. All section references are to the Business and Professions Code (Code) unless
27 otherwise indicated.
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4. Section 480 of the Code states, in pertinent part:

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application.

....

5. Section 493 of the Code states, in pertinent part:

(a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

....

6. Section 4300 of the Code states, in pertinent part:

....

(c) 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 of the Code 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 shall include, but is not limited to, any of the following:

....

(h) The 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.

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2 (p) Actions or conduct that would have warranted denial of a license.

3 **REGULATORY PROVISIONS**

4 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

13

14 (c) For purposes of subdivision (a), substantially related crimes, professional
15 misconduct, or acts shall include, but are not limited to, those which:

16

17 (5) Involve a conviction for driving under the influence of drugs or alcohol.

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(November 26, 2019 Criminal Conviction - DUI on August 31, 2018)**

20 9. Respondent’s application is subject to denial under Code sections 480, subdivision
21 (a)(1) and California Code of Regulations, title 16, section 1770, subdivision (a), in that
22 Respondent was convicted of a crime substantially related to the qualifications, functions, and
23 duties of a pharmacy technician. Specifically, on November 26, 2019, Respondent was convicted
24 of violating one misdemeanor count of Vehicle Code section 23152, subdivision (b) [driving
25 while having 0.08% or more by weight of alcohol in his blood] in a criminal proceeding entitled
26 *The People of the State of California vs. Oscar Ernesto Artiga* (Super. Ct. Contra Costa County,
27 2019, No. 02-3285770-7). The court sentenced Respondent to serve thirty (30) days in jail,
28 ordered him to complete a 6-month DUI program, and placed him on three (3) years of probation,
with terms and conditions.

10 10. The circumstances surrounding the conviction are that on or about August 31, 2018,
11 at approximately 7:25 p.m., during a traffic collision investigation with injuries and multiple
12 vehicles, an officer detected a strong odor of an alcoholic beverage emitting from inside

1 Respondent's vehicle. He was observed to have red watery eyes and a slow slurred speech.
2 Respondent admitted that he drank two (2) "Mike Harders" tall cans (24 oz. each). Respondent
3 admitted that he drank from 1600 hours to 1800 hours. When asked if he felt the side effects from
4 the drinks, Respondent stated, "a little bit." When asked to rate the effects he was feeling on a 1-
5 10 scale, Respondent stated, "about a 6." When asked what he was doing in San Pablo if he was
6 on his way to San Francisco, Respondent stated, "I do not know what I was doing in San Pablo, to
7 tell you the truth." During the booking procedure, at approximately 9:10 p.m., Respondent
8 submitted to a blood test that resulted in a blood alcohol concentration level of 0.183%.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Dangerous Use of Alcohol)**

11 11. Respondent's application is subject to denial under sections 4300, subdivision (c) and
12 4301, subdivision (h), in conjunction with California Code of Regulations, title 16, section 1770,
13 subdivision (c)(5), in that Respondent consumed alcoholic beverages to an extent, or in a manner,
14 as to be dangerous or injurious to himself, another person, or the public. Complainant refers to,
15 and by this reference incorporates, the allegations set forth above in paragraphs 9 and 10,
16 inclusive, as though set forth fully.

17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

18 **(Acts Warranting Denial of Licensure)**

19 12. Respondent's application is subject to denial under sections 4300, subdivision (c) and
20 4301, subdivision (p), in conjunction with California Code of Regulations, title 16, section 1770,
21 subdivision (a), in that Respondent committed acts which if done by a licentiate would be cause
22 for discipline. Complainant refers to, and by this reference incorporates, the allegations set forth
23 above in paragraphs 9 through 11, inclusive, as though set forth fully.

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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 Oscar Ernesto Artiga for a Pharmacy Technician License;
- and
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 4/15/2023

Sodergren,
Anne@DCA



Digitally signed by Sodergren,
Anne@DCA
Date: 2023.04.15 06:50:41 -07'00'

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

LA2023600354
Jz(4/6/23)