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

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

Case No. 7957

13 **BRIAN RICHARD MEDINA**

STATEMENT OF ISSUES

14 **Pharmacy Technician License Applicant**

15 Respondent.
16

17 **PARTIES**

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

20 2. On or about March 12, 2024, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for a Pharmacy Technician license from Brian Richard Medina
22 (Respondent). On or about March 12, 2024, Brian Richard Medina certified under penalty of
23 perjury to the truthfulness of all statements, answers, and representations in the application. The
24 Board denied the application on September 19, 2024.

25 **JURISDICTION**

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

4. Section 4300, subdivision (c), of the Code provides, in pertinent part, that 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.

STATUTORY PROVISIONS

5. 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. . . .

6. 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.

(b)

(1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

1 (2) A board shall not categorically bar an applicant based solely on the type of
conviction without considering evidence of rehabilitation.

2 (c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and
3 “registration.” . . .

4 7. Section 4301 of the Code states, in pertinent part:

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

7 . . .

8 (h) The administering to oneself, of any controlled substance, or the use of any
9 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
10 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.

11 . . .

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

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

24 **REGULATORY PROVISIONS**

25 8. California Code of Regulations (CCR), title 16, section 1769, provides, in
26 pertinent part:

27 . . .

(b) Denial of a license.

(1) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code on the grounds that the applicant has been convicted of a crime, the board will consider whether the applicant made a showing of rehabilitation if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the following criteria:

(A) The nature and gravity of the crime(s).

(B) The length(s) of the applicable parole or probation period(s).

(C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(E) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(2) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in paragraph (1) or the denial is based on professional misconduct, the board will apply the following criteria in evaluating an applicant's rehabilitation:

(A) The nature and gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(B) Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(C) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subparagraph (A) or (B).

(D) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(E) The criteria in paragraphs (1)(A) through (E), as applicable.

(F) Evidence, if any, of rehabilitation submitted by the applicant, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

...

1 9. California Code of Regulations, title 16, section 1770, states:

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

10 (b) In making the substantial relationship determination required under
11 subdivision (a) for a crime, the board will consider the following criteria:

12 (1) The nature and gravity of the offense;

13 (2) The number of years elapsed since the date of the offense; and

14 (3) The nature and duties of the practice, profession, or occupation that may be
15 performed under the license type sought or held.

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

18 (1) Violate or attempt to violate, directly or indirectly, or to aid, abet or
19 conspire to violate, any provision of law of this state, or any other jurisdiction,
20 governing the practice of pharmacy.

21 (2) Violate or attempt to violate, directly or indirectly, or to aid, abet or
22 conspire to violate, any provision of Chapter 13 (commencing with Section 801) of
23 Title 21 of the United States Code regulating controlled substances or any law of this
24 state, or any other jurisdiction, relating to controlled substances or dangerous drugs.

25 (3) Violate or attempt to violate, directly or indirectly, or to aid, abet or
26 conspire to violate, any provision of law of this state, or any other jurisdiction,
27 relating to government provided or government supported healthcare.

28 (4) Involve dishonesty, fraud, deceit, or corruption related to money, items,
documents, or personal information.

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Convictions)

10. Respondent's application is subject to denial under Code sections 480, subdivision
(a)(1), 4300, subdivision (c), and 4301, subdivision (I), in conjunction with California Code of
Regulations, title 16, section 1770, in that Respondent has been convicted of crimes which are
substantially related to the qualifications, functions and duties of a pharmacy technician.

1 11. On or about May 7, 2019, in a criminal proceeding entitled *The People of the State of*
2 *California v. Brian Richard Medina*, in Butte County Superior Court, Case Number CR-
3 18CM05797, Respondent was convicted by plea of no contest to violating Vehicle Code section
4 23152(b) (driving with a blood alcohol content of .08% or higher), a misdemeanor. Respondent
5 stipulated to having a blood alcohol content of 0.14%. Respondent was placed on three years of
6 probation with terms and conditions, ordered to complete an offender DUI program and to pay
7 fines. The circumstances are as follows:

8 a. On or about August 18, 2018, at approximately 11:00 p.m., officers with the
9 Chico Police Department conducted an enforcement stop after observing a vehicle fail to stop at a
10 stop sign prior to entering the crosswalk. While contacting the driver, later identified as
11 Respondent, the officers observed objective signs of intoxication, including delayed responses,
12 glossy eyes, and the odor of alcoholic beverage emitting from Respondent's vehicle. Respondent
13 repeatedly told the officer he hadn't consumed alcohol prior to driving. Respondent submitted to
14 a series of field sobriety tests, which he was unable to perform as explained and demonstrated by
15 the officer. Respondent submitted to breath tests at approximately 11:14 p.m. and 11:17 p.m., and
16 was determined to have a blood alcohol content of 0.13/.13%.

17 12. On or about November 19, 2021, in a criminal proceeding entitled *The People of the*
18 *State of California v. Brian Richard Medina*, in San Bernadino County Superior Court, Case
19 Number MWV20006876, Respondent was convicted by plea of no contest to violating Penal
20 Code section 647(a) (lewd or dissolute conduct in a public place), a misdemeanor. Respondent
21 was sentenced to 20 days in jail, placed on twelve months of summary probation with terms and
22 conditions, and ordered to complete thirty hours of community service, and to pay fines. The
23 circumstances are as follows:

24 a. On or about May 28, 2020, at approximately 8:14 p.m., an officer with the San
25 Bernardino County Sheriff's Department was dispatched to a keep the peace call in Chino Hills,
26 California. The officer, was informed that an individual, later identified as Respondent had
27 groped Victim 1, a minor, two to three times on the right side of her body and placed his hands in
28 her private areas at least three times. As he continued to dry hump her Victim 1, she told him to

1 stop multiple times. The officer contacted Respondent and Respondent told the officer “he was
2 sorry, and it was an accident.” Respondent told that the officer he had consumed White Claws
3 throughout the night and was drunk from the alcoholic beverages he consumed. Respondent told
4 the officer did not know he was touching victim and believed it was his friend.

5 13. On or about February 22, 2024, in a criminal proceeding entitled *The People of the*
6 *State of California v. Brian Richard Medina*, in Sutter County Superior Court, Case Number
7 MWV20006876, Respondent was convicted by plea of no contest to violating Vehicle Code
8 section 23152(b) (driving with a blood alcohol content of .08% or higher), a misdemeanor, with
9 enhancements under Vehicle Code section 23152(e (prior DUI conviction). Respondent was also
10 convicted by plea of no contest to violating Vehicle Code section 14601.2 (driving while his
11 driving privilege was suspended, revoked or restricted for a conviction), a misdemeanor.
12 Respondent was sentenced to 20 days in jail, placed on sixty months of summary probation with
13 terms and conditions, and ordered to complete an 18-month multiple offender DUI program, to
14 install an ignition interlock device, and to pay fines. On or about April 15, 2024, Respondent’s
15 probation was revoked and a warrant was issued for his arrest, due to Respondent failing to enroll
16 in Pathways. On or about July 25, 2024, Respondent’s probation was reinstated and Respondent
17 was placed on a five year probation, with the same terms as his original probation. On or about
18 September 12, 2024, Respondent’s probation was revoked again and a warrant was issued for his
19 arrest, due to Respondent failing to enroll in a DUI program. On or about October 1, 2024,
20 Respondent’s probation was reinstated and Respondent was sentenced to four days in jail, to run
21 concurrent with any other sentence, and placed on a five year summary probation with terms and
22 conditions, and ordered to complete an 18-month multiple offender DUI program, to install an
23 ignition interlock device, and to pay fines. The circumstances are as follows:

24 a. On or about October 4, 2023, at approximately 1:06 a.m., officers with the
25 Yuba City Police Department responded to call involving a male and a female subject who
26 arrived at a residence in Yuba City, California, searching for a missing iPhone. An officer arrived
27 at the residence at the same time he observed the two subjects leaving. The officer followed the
28 vehicle and conducted an investigatory traffic stop. Upon making contact with the driver of the

1 vehicle, later identified as Respondent, the officer noticed Respondent had watery eyes, slurred
2 speech, and an odor of alcohol was emitting from the vehicle. The officer asked Respondent for
3 his driver's license, but Respondent only provided the officer with his California identification
4 card. The officer notified Respondent that was his identification card and not a driver's license.
5 Respondent reiterated to the officer that was his driver's license. Respondent then told the officer
6 his license was suspended for a DUI. Respondent refused to submit to a series of field sobriety
7 tests, and to submit to a breath test. Respondent was arrested, and taken to Sutter County Jail.
8 Respondent submitted to breath tests at the jail at approximately 2:02 a.m. and 2:04 a.m. and was
9 determined to have a blood alcohol content of 0.19/0.19%.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Dangerous Use of Alcohol)**

12 14. Respondent's application is subject to denial under Code sections 4300, subdivision
13 (c), and 4301, subdivision (h), in that, as set forth in paragraphs 11 through 13 above, on or about
14 August 18, 2018, May 28, 2020, and October 4, 2023, Respondent used alcoholic beverages to an
15 extent, or in a manner, as to be dangerous or injurious to himself, others, and the public.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

17 **(Unprofessional Conduct: Conviction of Multiple Misdemeanors Involving Alcoholic** 18 **Beverages)**

19 15. Respondent's application is subject to denial under Code sections 4300, subdivision
20 (c), and 4301, subdivision (k), in that, as set forth in paragraphs 11 through 13 above, Respondent
21 was convicted of more than one misdemeanor involving the use, consumption or self-
22 administration of alcohol.

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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 Brian Richard Medina for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/20/2025

Sodergren,
Anne@DCA

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Date: 2025.02.20 08:11:26
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ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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