

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **EDUARDO MARTINEZ**
14 **3751 Briarvale Street**
Corona, CA 91719

15 **Pharmacy Technician Registration No. TCH**
16 **35741**

17 Respondent.

Case No. 6735

18 **DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about September 3, 2019, Complainant Anne Sodergren, in her official
21 capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of
22 Consumer Affairs, filed Accusation No. 6735 against Eduardo Martinez (Respondent) before the
Board of Pharmacy. (Accusation attached as Exhibit A.)

23 2. On or about January 5, 2001, the Board issued Pharmacy Technician Registration No.
24 TCH 35741 to Respondent. The Pharmacy Technician Registration was in full force and effect at
25 all times relevant to the charges brought in Accusation No. 6735 and will expire on February 29,
26 2020, unless renewed.

27 3. On or about September 10, 2019, Respondent was served by Certified and First Class
28 Mail copies of the Accusation No. 6735, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 (Code) section 4100, is required to be reported and maintained with the Board. Respondent's
4 address of record was and is: 3751 Briarvale Street, Corona, CA 91719.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505(c) and/or Business and Professions Code section 124.

7 5. Government Code section 11506(c) states, in pertinent part:

8 (c) The respondent shall be entitled to a hearing on the merits if the respondent
9 files a notice of defense . . . and the notice shall be deemed a specific denial of all
10 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
11 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
12 discretion may nevertheless grant a hearing.

13 6. The Board takes official notice of its records and the fact that Respondent failed to
14 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
15 waived his right to a hearing on the merits of Accusation No. 6735.

16 7. California Government Code section 11520(a) states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense . . . or to appear at
18 the hearing, the agency may take action based upon the respondent's express
19 admissions or upon other evidence and affidavits may be used as evidence without
20 any notice to respondent

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
24 as well as taking official notice of all the investigatory reports, exhibits and statements contained
25 therein on file at the Board's offices regarding the allegations contained in Accusation No. 6735,
26 finds that the charges and allegations in Accusation No. 6735, are separately and severally, found
27 to be true and correct by clear and convincing evidence.

28 9. The Board finds that the actual costs for Investigation and Enforcement are \$2,186.25
as of October 11, 2019.

///

///

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Eduardo Martinez has subjected his Pharmacy Technician Registration No. TCH 35741 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Respondent has subjected his registration to disciplinary action under Code sections 4301, subdivision (l), and/or 490, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that on April 23, 2019, Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician.

b. Respondent has subjected his registration to disciplinary action under Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude on January 27, 2017, March 2, 2017, and September 17, 2017. Respondent physically assaulted the victim causing great bodily injury.

c. Respondent has subjected his registration to disciplinary action under Code section 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcoholic beverages to an extent, and in a manner that was dangerous to himself and the public, on or about January 27, 2017, March 2, 2017, and September 17, 2017.

///

///

///

///

///

///

///

///

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 35741, issued to Respondent Eduardo Martinez, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on January 23, 2020.

It is so ORDERED on December 24, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Greg Lippe
Board President

72030538.DOCX
DOJ Matter ID:SD2019701170

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TORY POLIN
Deputy Attorney General
4 State Bar No. 299988
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9459
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 6735

14 **EDUARDO MARTINEZ**
15 **3751 Briarvale Street**
Corona, CA 91719

ACCUSATION

16 **Pharmacy Technician Registration No.**
17 **TCH 35741**

Respondent.

19
20 **PARTIES**

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

24 2. On or about January 5, 2001, the Board issued Pharmacy Technician Registration
25 Number TCH 35741 to Eduardo Martinez (Respondent). The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 February 29, 2020, unless renewed.

28 ///

JURISDICTION

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

4. Section 4300, subdivision (a) of the Code states, "Every license issued may be suspended or revoked."

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 482¹ of the Code states:

(a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(1) Considering the denial of a license by the board under Section 480; or

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

///

¹ Amended by Stats. 2018, Ch. 995, Sec. 8. (AB 2138) Effective January 1, 2019. Section inoperative July 1, 2020. Repealed as of January 1, 2021, by its own provisions. See later operative version added by Stats. 2018, Ch. 995.

1 8. Section 493² of the Code states:

2 (a) Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that the applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive evidence
8 of the fact that the conviction occurred, but only of that fact, and the board may inquire
9 into the circumstances surrounding the commission of the crime in order to fix the
10 degree of discipline or to determine if the conviction is substantially related to the
11 qualifications, functions, and duties of the licensee in question.

12 (b) As used in this section, “license” includes “certificate,” “permit,” “authority,”
13 and “registration.”

14 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
15 2021, is repealed.

16 9. Section 4301 of the Code states:

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

20 ...

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

24 ...

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

30 ...

31 (i) The conviction of a crime substantially related to the qualifications,
32 functions, and duties of a licensee under this chapter. The record of conviction of a
33 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
34 States Code regulating controlled substances or of a violation of the statutes of this
35 state regulating controlled substances or dangerous drugs shall be conclusive
36 evidence of unprofessional conduct. In all other cases, the record of conviction shall
37 be conclusive evidence only of the fact that the conviction occurred. The board may
38 inquire into the circumstances surrounding the commission of the crime, in order to
39 fix the degree of discipline or, in the case of a conviction not involving controlled

² Amended by Stats. 2018, Ch. 995, Sec. 12. (AB 2138) Effective January 1, 2019.
Section inoperative July 1, 2020. Repealed as of January 1, 2021, by its own provisions. See later
operative version added by Stats. 2018, Ch. 995.

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 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 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 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 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (c), states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COST RECOVERY

12. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

///

///

FACTUAL ALLEGATIONS

13. On or about January 27, 2017, a Riverside County Sheriff's deputy responded to a call regarding a restraining order violation. Upon arrival, the deputy spoke with the protected party. The victim stated that Respondent showed up uninvited to the victim's home, confronted her, then he spit on the victim's face and immediately left the residence. Respondent's daughter witnessed the battery. The victim stated Respondent appeared to be under the influence of alcohol, as she could smell it on his spit. On September 15, 2017, criminal charges were brought against Respondent in a proceeding entitled *The People of the State of California v. Eduardo Martinez, aka Eddie Martinez*, in Riverside County Superior Court, case number RIM1710129. The charges filed were Penal Code § 243(e)(1), battery on spouse/co-habitant, and Penal Code § 273.6(a), violating a court order to prevent domestic violence, both misdemeanors. On April 22, 2019, a trial readiness conference was held, wherein Respondent failed to appear. The court issued a warrant for his arrest, which is currently active.

14. On or about March 2, 2017, a Riverside County Sheriff's deputy responded to a domestic violence call. Upon arrival, the deputy spoke with the victim, who stated that her husband, Respondent, was in violation of a criminal protective order. That morning, Respondent came to the victim's residence and demanded entry. Respondent sounded like he had been drinking alcohol. The victim refused and left out the backdoor with two of her children. When she returned to the residence, she observed Respondent on her porch drinking a beer. Respondent then ran over to her vehicle, confronted her, and placed his body on the car door jam, preventing her from driving away. The victim believed Respondent was heavily intoxicated. The victim attempted to call 911, but Respondent threw the phone on the ground causing the screen to crack. Respondent continued harassing the victim by pressing his body against her thereby preventing her from leaving. Respondent also broke her ignition key as a result of the altercation. The victim stated she had her two minor children inside the vehicle who witnessed the assault. Respondent ultimately left the scene before the deputy arrived. During the interview, the victim received a phone call from Respondent. He initially identified himself being with the Riverside Sheriff's Department, then began yelling and screaming at the victim. The victim also stated that

1 Respondent had violated the protective order on multiple occasions, which were not documented.
2 Specifically on February 14, 2017, Respondent showed up uninvited to the victim's residence and
3 yelled profanities at one of his children. Criminal charges were brought against Respondent in a
4 proceeding entitled *The People of the State of California v. Eduardo Martinez, aka Eddie*
5 *Martinez*, in Riverside County Superior Court, case number RIF1704448. The case was
6 consolidated with lead case RIF1704610 as detailed in paragraph 15 below. On April 23, 2019, a
7 jury ultimately convicted Respondent of all 15 counts, as described in paragraph 16.

8 15. On or about September 17, 2017, a Riverside County Sheriff's deputy responded to a
9 domestic violence call involving Respondent. The victim stated to the deputy that she had met
10 with Respondent at a pizza restaurant for a visitation scheduled with her four children in
11 common. She stated that she decided to wait in the parking lot, as Respondent appeared to be
12 heavily intoxicated. Minutes later, Respondent came to her vehicle and began arguing with the
13 victim when she refused to leave. The victim then got out of the vehicle attempting to get her
14 purse. However, Respondent grabbed her by the hair and threw her into the back seat of the
15 vehicle and began driving away. The children then ran out trying to stop Respondent.
16 Respondent drove about a mile away, got in the backseat, and began attacking her. Respondent
17 again started driving away. He stopped in front of a church, then grabbed her by the hair and
18 dragged her down to the ground, causing her to slam her head into the car door jam in the process.
19 He then pushed her where she rolled into a gutter, and drove away. The deputy observed the
20 victim's injuries, which included a large bump near her forehead, abrasions by her hairline,
21 redness to her face, and blood dripping down her face. Criminal charges were brought against
22 Respondent in a proceeding entitled *The People of the State of California v. Eduardo Martinez,*
23 *aka Eddie Martinez*, in Riverside County Superior Court, case number RIF1704610, which was
24 consolidated with case number RIF1704448, as referenced herein. On April 23, 2019, a jury
25 ultimately convicted Respondent of 15 counts, as described in paragraph 16.

26 ///

27 ///

28 ///

FIRST CAUSE FOR DISCIPLINE

(April 23, 2019 Convictions of a Substantially Related Crime)

16. Respondent has subjected his registration to disciplinary action under Code sections 4301, subdivision (l), and/or 490, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician, as follows:

a. On or about April 23, 2019, in the criminal proceeding entitled *The People of the State of California v. Eduardo Martinez, aka Eddie Martinez*, in Riverside County Superior Court, lead case number RIF1704448, consolidated with case number RIF1704610, a jury convicted Respondent of violating the following 15 counts:

Penal Code § 207(a), kidnapping, a felony;

Penal Code § 215(a), carjacking, a felony;

Penal Code § 209.5, kidnapping during the commission of carjacking, a felony;

Penal Code § 273A(a) willful child cruelty, a felony; four (4) counts;

Penal Code § 236, false imprisonment, a felony;

Penal Code § 422, criminal threats, a felony;

Penal Code § 136.1(c)(1), victim/witness intimidation, a felony; two (2) counts;

Penal Code § 273.5(a), inflict corporal injury on spouse/co-habitant, a felony;

Penal Code § 166(c)(1), knowingly violate a protective court order, a misdemeanor;

Penal Code § 243(e)(1), battery on spouse/co-habitant, a misdemeanor; and

Penal Code § 273A(b), abuse/endanger/willfully harm a child, a misdemeanor;

Respondent failed to appear at the court proceeding. As a result, a bench warrant was issued and is still active.

///

///

///

///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct- Moral Turpitude on January 27, 2017,**
3 **March 2, 2017 and September 17, 2017)**

4 17. Respondent has subjected his registration to disciplinary action under Code section
5 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed
6 acts involving moral turpitude on January 27, 2017, March 2, 2017, and September 17, 2017.
7 Respondent physically assaulted the victim causing great bodily injury, as Complainant refers to,
8 and by this reference incorporates, the allegations set forth above in paragraphs 13 through 16, as
9 though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct – Dangerous Use of Alcohol)**

12 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
13 on the grounds of unprofessional conduct, in that Respondent used alcoholic beverages to an
14 extent, and in a manner that was dangerous to himself and the public, on or about January 27,
15 2017, March 2, 2017, and September 17, 2017. Complainant refers to, and by this reference
16 incorporates, the allegations set forth above in paragraphs 13 and 15, as though set forth fully.

17 **DISCIPLINARY CONSIDERATIONS**

18 19. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about February 1, 2017, in a criminal proceeding entitled *The*
20 *People of the State of California v. Eduardo Martinez*, in Riverside County Superior Court, case
21 number RIF1604584, Respondent was convicted on his plea of guilty of violating Penal Code
22 section 273.5, subdivision (a) (inflict corporal injury to spouse/Co-Habitant), a misdemeanor. The
23 court placed Respondent on summary probation for 3 years and granted a domestic violence
24 protective order for the victim and her four children. On April 23, 2019, the court issued a bench
25 warrant against Respondent for violating probation. The circumstances that led to the conviction
26 are that on or about July 27, 2016, Respondent physically assaulted the victim and made threats.

27 ///

28 ///

20. The Board subsequently issued Citation No. CI 2016 71690 on February 16, 2017, to Respondent based on violations of Code section 4301, subdivisions (h) and (l). Respondent was assessed a fine, in the amount of \$200. That Citation is now final.

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. Revoking or suspending Pharmacy Technician Registration Number TCH 35741,
issued to Eduardo Martinez;

2. Ordering Eduardo Martinez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed proper.

DATED: September 3, 2019

Anne Sodergran

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

SD2019701170
71937605.docx