

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOVANNY CHAVEZ
2381 Gehrig St. #A
West Covina, CA 91792

**Pharmacy Technician Registration No. TCH
140624**

Respondent.

Case No. 6767

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 1, 2020, Complainant Anne Sodergren, in her official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 6767 against Jovanny Chavez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about July 9, 2014, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 140624 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 6767 and will expire on May 31, 2020, unless renewed.

///

1 3. On or about January 1, 2020, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 6767, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 2381 Gehrig St. #A, West Covina, CA 91792.

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

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

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

15 6. The Board takes official notice of its records and the fact that Respondent failed to
16 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
17 waived his right to a hearing on the merits of Accusation No. 6767.

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

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

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
26 as well as taking official notice of all the investigatory reports, exhibits and statements contained
27 therein on file at the Board's offices regarding the allegations contained in Accusation No. 6767,
28 finds that the charges and allegations in Accusation No. 6767, are separately and severally, found
to be true and correct by clear and convincing evidence.

 9. The Board finds that the actual costs for Investigation and Enforcement are \$3,787.50
as of June 2, 2020.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Jovanny Chavez has subjected
3 his Pharmacy Technician Registration No. TCH 140624 to discipline.

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

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

8 a. Respondent is subject to disciplinary action under Code sections 4059, subdivision
9 (a), and 4060 in conjunction with Health and Safety Code sections 11170 and 11171;

10 b. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
11 in that Respondent committed multiple acts involving moral turpitude, dishonesty, fraud, deceit,
12 or corruption;

13 c. Business and Professions Code section 4301, subdivisions (j) and (o) and Health and
14 Safety Code section 11173, subdivision (a), in that Respondent obtained controlled substances by
15 fraud, deceit, subterfuge, or concealment of material fact; and,

16 d. Respondent is subject to disciplinary action under Code section 4301, subdivision (j).

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER


IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 140624, issued to Respondent Jovanny Chavez, 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 August 26, 2020.

It is so ORDERED on July 27, 2020.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

By 

Greg Lippe
Board President

54051190.DOCX
DOJ Matter ID:LA2019505203

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 ELYSE M. DAVIDSON
Deputy Attorney General
4 State Bar No. 285842
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6273
6 Facsimile: (916) 731-2126
Attorneys for Complainant
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:

Case No. 6767

13 **JOVANNY CHAVEZ**
2381 Gehrig St. #A
14 West Covina, CA 91792

ACCUSATION

15 **Pharmacy Technician Registration No.**
16 **TCH 140624**

Respondent.

17
18
19 **PARTIES**

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

23 2. On or about July 9, 2014, the Board issued Pharmacy Technician Registration
24 Number TCH 140624 to Jovanny Chavez (“Respondent”). The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 May 31, 2020, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section **4011** of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health and Safety Code, § 11000 et seq.].

8 5. Section **4300** states, in pertinent part, that “[e]very license issued may be suspended
9 or revoked.”

10 6. Section **4300.1** of the Code states:

11 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
12 operation of law or by order or decision of the board or a court of law, the placement
13 of a license on a retired status, or the voluntary surrender of a license by a licensee
14 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.

15 **STATUTORY PROVISIONS**

16 7. Section **477** states, in part: “As used in this division: . . . (b) ‘License’ includes
17 certificate, registration or other means to engage in a business or profession regulated by this
18 code.”

19 8. Section **4301** of the Code states:

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

22 ...

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

25 ...

26 (j) The violation of any of the statutes of this state, of any other state, or of the United
27 States regulating controlled substances and dangerous drugs.

28 ...

///
28

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
2 the violation of or conspiring to violate any provision or term of this chapter or of the
3 applicable federal and state laws and regulations governing pharmacy, including
4 regulations established by the board or by any other state or federal regulatory agency.

5 9. Section **4059** of the Code states:

6 (a) A person may not furnish any dangerous drug, except upon the prescription of a
7 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
8 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
9 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
10 naturopathic doctor pursuant to Section 3640.7. . . .+

11 10. Section **4060** of the Code states:

12 A person shall not possess any controlled substance, except that furnished to a person
13 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
14 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
15 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner
16 pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a
17 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section
18 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any
19 controlled substance by a manufacturer, wholesaler, third-party logistics provider,
20 pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
21 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician
22 assistant, if in stock in containers correctly labeled with the name and address of the
23 supplier or producer. . . .

24 11. Section **11170** of the Health and Safety Code states:

25 No person shall prescribe, administer, or furnish a controlled substance for himself.

26 12. Section **11171** of the Health and Safety Code states:

27 No person shall prescribe, administer, or furnish a controlled substance except under
28 the conditions and in the manner provided by this division.

1 (a) No person shall obtain or attempt to obtain controlled substances, or procure or
2 attempt to procure the administration of or prescription for controlled substances, (1)
3 by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
4 material fact.

(b) No person shall make a false statement in any prescription, order, report, or
record, required by this division.

...

///

///

///

1 14. Section **11350** of the Health and Safety Code states:

2 (a) Except as otherwise provided in this division, every person who possesses (1)
3 any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of
4 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
9 practice in this state, shall be punished by imprisonment in a county jail for not more
10 than one year, except that such person shall instead be punished pursuant
11 to subdivision (h) of Section 1170 of the Penal Code if that person has one or more
12 prior convictions for an offense specified in clause (iv) of subparagraph (C) of
13 paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense
14 requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

15 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

16 15. Section 4021 of the Code states, in pertinent part:

17 “Controlled substances: means any substance listed in Chapter 2 (commencing with Section
18 11053) of Division 10 of the Health and Safety Code.”

19 16. Section 4022 of the Code states:

20 ‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use
21 in humans or animals, and includes the following:

22 (a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
23 prescription,’ ‘Rx only,’ or words of similar import.

24 (b) Any device that bears the statement: ‘Caution: federal law restricts this device to
25 sale by or on the order of a _____,’ ‘Rx only,’ or words of similar import, the
26 blank to be filled in with the designation of the practitioner licensed to use or order
27 use of the device.

28 (c) Any other drug or device that by federal or state law can be lawfully dispensed
only on prescription or furnished pursuant to Section 4006.

17 17. Phenergan with Codeine is commonly known by the brand name “Promethazine with
18 Codeine.” It is a Schedule V controlled substance pursuant to Health and Safety Code section
19 11058(c)(1) and is a dangerous drug pursuant to Business and Professions Code section 4022.

20 18. Alprazolam is commonly known by the brand name “Xanax” and is part of the
21 Benzodiazepine class. It is a Schedule IV controlled substance pursuant to Health and Safety
22 Code section 11057, subdivision (d)(1) and a dangerous drug pursuant to section 4022 of the
23 Code.

1 25. On or about March 29, 2019, PIC Rani attempted to confront Respondent about the
2 adjustments on the dispensing/inventory reports. Respondent denied knowledge of ordering or
3 receiving these products; however, he asked for a 10-minute break before continuing the
4 discussion, stating he was going to grab something from his car, but never returned. PIC Rani
5 made multiple attempts to contact Respondent but was unsuccessful.

6 26. On or about April 11, 2019, a Board inspector conducted an inspection of Bonnie
7 Cove Pharmacy and interviewed PIC Rani. The only staff member present during the inspection
8 was PIC Rani who assisted in the collection of documents related to the theft of the controlled
9 substances.

10 27. PIC Rani informed the Board inspector that Respondent's duties in the pharmacy
11 included entering orders into the system as directed. Also, Respondent would deliver patient
12 medications to their residences.

13 28. After an internal audit and inspection, the Board inspector determined that from June
14 11, 2018 through March 29, 2019, Respondent had stolen from the pharmacy a total of 53,794
15 ml's and 900 tablets of controlled substances which consisted of the following:

- 16 a. 53,794 ml's of promethazine with codeine 6.25mg/10mg per 5ml's syrup
17 (approximately 114 bottles)
- 18 b. 100 alprazolam 2mg tablets
- 19 c. 500 tramadol 50mg tablets
- 20 d. 100 diazepam 5mg tablets
- 21 e. 100 lorazepam 0.5mg tablets
- 22 f. 100 lorazepam 2mg tablets

23 Specifically, the investigation determined that Respondent made manual adjustments in the
24 exact amount of loss in comparison to the Rx Item Balance On Hand Audit for the controlled
25 substances alprazolam, diazepam, and lorazepam 2mg, as listed above.

26 ///

27 ///

28 ///

1 fraud, deceit, subterfuge, or concealment of material fact when he diverted controlled substances
2 and dangerous drugs on and between June 11, 2018 through March 29, 2019. Complainant refers
3 to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 30,
4 as though set forth fully.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Violations of Controlled Substance Statutes)**

7 34. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
8 in that Respondent violated statutes regulating controlled substances, including Health and Safety
9 Code, section 11350, subdivision (a), (possessing controlled substances) and dangerous drugs
10 when he diverted controlled substances and dangerous drugs on and between June 11, 2018
11 through March 29, 2019. Complainant refers to, and by this reference incorporates, the allegations
12 set forth above in paragraphs 23 through 30, as though set forth fully.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 140624,
17 issued to Jovanny Chavez;
- 18 2. Ordering Jovanny Chavez to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.
- 22

23 DATED: December 6, 2019



24 ANNE SODERGREN
25 Interim Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant