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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. 6921

13 **HEATHER LEE DAVIS**
14 **3715 Tallyho Dr. #178**
Sacramento, CA 95826

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician Registration No. TCH**
16 **148407**

[Gov. Code, §11520]

17 Respondent.

18
19 **FINDINGS OF FACT**

20 1. On or about April 30, 2020, Complainant Anne Sodergren, in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
22 Accusation No. 6921 against Heather Lee Davis (Respondent) before the Board of Pharmacy.
23 (Accusation attached as Exhibit A.)

24 2. On or about May 14, 2015, the Board of Pharmacy (Board) issued Pharmacy
25 Technician Registration Number 148407 to Respondent. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 6921
27 and will expire on January 31, 2021, unless renewed.

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1 3. On or about May 4, 2020, Respondent was served by Certified and First Class Mail
2 copies of Accusation No. 6921, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 3715 Tallyho Dr., #178
8 Sacramento, CA 95826.

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

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

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

17 6. The Board takes official notice of its records and the fact that Respondent failed to
18 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
19 waived her right to a hearing on the merits of Accusation No. 6921.

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

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
28 as well as taking official notice of all the investigatory reports, exhibits, and statements contained
therein on file at the Board's offices regarding the allegations contained in Accusation No. 6921,
finds that the charges and allegations in Accusation No. 6921, 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 \$3,377.75 as of June 24, 2020.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Heather Lee Davis has subjected her Pharmacy Technician Registration Number 148407 to discipline.

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

3. The Board of Pharmacy 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. Violation of Business and Professions Code section 4059, subdivision (a), by and through Section 4301, subdivision (j), in that Respondent furnished a dangerous drug without a prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor. The circumstances are that on or about August 16, 2019, Respondent admitted to accessing the pharmaceutical waste at Sutter Medical Center for the purpose of diverting Fentanyl injectable for self-medication.

b. Violation of Business and Professions Code section 4301, subdivision (f), by and through California Code of Regulations, title 16, section 11173, subdivision (a), in that Respondent obtained a controlled substance by fraud, deceit, misrepresentation, or subterfuge.

c. Violation of Business and Professions Code section 4301, subdivision (h), for self-administration of a controlled substance or use of a dangerous drug to an extent or in a manner as to be dangerous or injurious to Respondent or any other person of the public.

d. Violation of Business and Professions Code section 4301, subdivision (j), by and through Section 4060 and California Health and Safety Code section 11170, for use of a controlled substance and dangerous drug.

e. Violation of Business and Professions Code section 4301, subdivision (o), by and through California Health and Safety Code sections 11170 and 11173, for violation of the applicable State Laws for illegal use of a controlled substance and dangerous drug.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. 148407, issued to Respondent Heather Lee Davis, 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 on August 26, 2020.

It is so ORDERED July 27, 2020



Greg Lippe
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

SA2020101225

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Supervising Deputy Attorney General
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Attorneys for Complainant
8

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
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13 In the Matter of the Accusation Against:

Case No. 6921

14 **HEATHER LEE DAVIS**
15 **3715 Tallyho Dr. #178**
Sacramento, CA 95826

ACCUSATION

16 **Pharmacy Technician Registration No. TCH**
17 **148407**

Respondent.

18
19 **PARTIES**

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

22 2. On or about May 14, 2015, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 148407 to Heather Lee Davis (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2021, unless renewed.

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JURISDICTION

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

4. Code section 4300.1 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.

5. Code section 4307 states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5

(commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

BUSINESS AND PROFESSIONS CODE

6. Code section 4022, subdivision (c) states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in humans or animals, and includes the following:

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

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

"(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."

7. Code section 4059, subdivision (a), states:

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

8. Code section 4060 states:

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

This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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1 9. Code section 4301 states, in pertinent part:

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

4 ...

5 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
6 deceit, or 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
7 not.

8 ...

9 (h) The administering to oneself, of any controlled substance, or the use of
10 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
11 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..

12 (i) Except as otherwise authorized by law, knowingly selling, furnishing,
13 giving away, or administering, or offering to sell, furnish, give away, or
administer, any controlled substance to an addict.

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

16 ...

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

20

21 10. Code section 4307 states:

22 (a) Any person who has been denied a license or whose license has been revoked or
23 is under suspension, or who has failed to renew his or her license while it was under
suspension, or who has been a manager, administrator, owner, member, officer, director,
24 associate, partner, or any other person with management or control of any partnership,
corporation, trust, firm, or association whose application for a license has been denied or
25 revoked, is under suspension or has been placed on probation, and while acting as the
manager, administrator, owner, member, officer, director, associate, partner, or any other
26 person with management or control had knowledge of or knowingly participated in any
conduct for which the license was denied, revoked, suspended, or placed on probation, shall
27 be prohibited from serving as a manager, administrator, owner, member, officer, director,
associate, partner, or in any other position with management or control of a licensee as
28 follows:

1 (1) Where a probationary license is issued or where an existing license is placed
2 on probation, this prohibition shall remain in effect for a period not to exceed five
3 years.

4 (2) Where the license is denied or revoked, the prohibition shall continue until the
5 license is issued or reinstated.

6 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or
7 any other person with management or control of a license" as used in this section and
8 Section 4308 , may refer to a pharmacist or to any other person who serves in such capacity
9 in or for a licensee.

10 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
11 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government
12 Code. However, no order may be issued in that case except as to a person who is named in
13 the caption, as to whom the pleading alleges the applicability of this section, and where the
14 person has been given notice of the proceeding as required by Chapter 5 (commencing with
15 Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed
16 as provided by this subdivision shall be in addition to the board's authority to proceed under
17 Section 4339 or any other provision of law.

18 **HEALTH AND SAFETY CODE**

19 11. California Health and Safety Code section 11170 states, "No person shall prescribe,
20 administer, or furnish a controlled substance for himself."

21 12. California Health and Safety Code section 11173, subdivision (a), states:

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

25 **COST RECOVERY**

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

29 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

30 14. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code
31 section 11055, subdivision (c)(8). It is a dangerous drug pursuant to Code section 4022.

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1 **FACTUAL ALLEGATIONS**

2 15. On or about August 19, 2019, Sutter Medical Center, in Sacramento, CA notified the
3 Board of suspected employee theft of one vial of Fentanyl.

4 16. On or about September 9, 2019, Sutter Medical Center provided the Board with the
5 statement of Pharmacy Operations Manager TL and Human Resources Partner VF, that on or
6 about August 16, 2019, Respondent admitted that while employed as a Pharmacy Technician at
7 Sutter Medical Center, she accessed the pharmaceutical waste for the purpose of diverting
8 injectable Fentanyl for herself because she was an addict.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Furnishing a Dangerous Drug Without a Prescription)**

11 17. Respondent is subject to disciplinary action under Code section 4059, subdivision (a),
12 by and through Code section 4301, subdivision (j), in that she furnished a dangerous drug without
13 a prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
14 doctor. The circumstances are that on or about August 16, 2019, Respondent admitted to
15 accessing the pharmaceutical waste at Sutter Medical Center for the purpose of diverting Fentanyl
16 injectable for self-medication, as described with more particularity in paragraphs 15-16, above.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Obtaining a Controlled Substance by Fraud, Deceit, Misrepresentation, or Subterfuge)**

19 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
20 by and through California Code of Regulations, section 11173, subdivision (a), in that she
21 obtained a controlled substance by fraud, deceit, misrepresentation, or subterfuge, as set forth in
22 paragraphs 15-16, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Administering to Oneself of Any Controlled Substance or the Use of Any Dangerous Drug**
25 **to the Extent or in a Manner as to be Dangerous or Injurious to Oneself or to Any Other**
26 **Person or the Public)**

27 19. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
28 for self-administration of a controlled substance or use of a dangerous drug to an extent or in a

1 manner as to be dangerous or injurious to herself or any other person of the public, as set forth in
2 paragraphs 15-16, above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Use of an Illicit Drug)**

5 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
6 by and through Code section 4060 and California Health and Safety Code section 11170, for use
7 of a controlled substance and dangerous drug, as set forth in paragraphs 15-16, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Violating or Attempting to Violate Any Provision or Term of This Chapter or of the**
10 **Applicable Federal and State Laws and Regulations Governing Pharmacy)**

11 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
12 by and through California Health and Safety Code sections 11170 and 11173, for violating of the
13 applicable State Laws for illegal use of a controlled substance and dangerous drug, as set forth in
14 paragraphs 15-16, above.

15 **OTHER MATTERS**

16 22. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician
17 Registration Number TCH 148407, issued to Heather Lee Davis, Heather Lee Davis shall be
18 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
19 or partner of a licensee for five years if Pharmacy Technician Registration Number TCH 148407
20 is placed on probation or until Pharmacy Technician Registration Number TCH 148407 is
21 reinstated if it is revoked.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 148407,
26 issued to Heather Lee Davis;

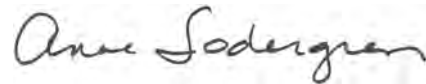
27 2. Prohibiting Heather Lee Davis from serving as a manager, administrator, owner,
28 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician

1 Registration Number TCH 148407 is placed on probation or until Pharmacy Technician
2 Registration Number TCH 148407 is reinstated if Pharmacy Technician Registration Number
3 TCH 148407 issued to Heather Lee Davis is revoked;

4 3. Ordering Heather Lee Davis to pay the Board of Pharmacy the reasonable costs of the
5 investigation and enforcement of this case, pursuant to Business and Professions Code section
6 125.3; and,

7 4. Taking such other and further action as deemed necessary and proper.
8
9

10 DATED: April 30, 2020



11 ANNE SODERGREN
12 Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 *Complainant*

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