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

In the Matter of the Accusation Against:

DAVID GARCIA HERNANDEZ
3627 W. Camille St. #C
Santa Ana, CA 92704

Pharmacy Technician License Number
TCH 168976

Respondent.

Case No. 6939

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 5, 2020, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed an Accusation against David Garcia Hernandez (Respondent) before the Board of Pharmacy. As filed, the Accusation was incorrectly identified with Case Number 6893. The correct case number for the aforementioned matter is 6939, as noted above. (Accusation attached as Exhibit A.)

2. On or about March 13, 2019, the Board issued Pharmacy Technician License Number TCH 168976 to Respondent on a 150-day temporary license basis, pursuant to section 17520 of the Family Code. The Pharmacy Technician License was in full force and effect at all times

1 relevant to the charges brought in the Accusation Number. The Pharmacy Technician License
2 expired on July 31, 2020, and has not been renewed. This lapse in licensure, however, pursuant
3 to Business and Professions Code (Code) section 118, subdivision (b) and Code section 4300.1,
4 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

5 3. On or about August 13, 2020, Respondent was served by Certified and First Class
6 Mail copies of the attached Accusation, Statement to Respondent, Notice of Defense, Request for
7 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
8 Respondent's address of record which, pursuant to Code section 4100, is required to be reported
9 and maintained with the Board. Respondent's address of record was and is:

10 **3627 W. Camille St. #C**
11 **Santa Ana, CA 92704**

12 4. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Code section 124.

14 5. Government Code section 11506, subdivision (c) states:

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

20 6. The Board takes official notice of its records and the fact that Respondent failed to
21 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
22 waived his right to a hearing on the merits of the attached Accusation.

23 7. California Government Code section 11520, subdivision (a) states:

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

28 8. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
as well as taking official notice of all the investigatory reports, exhibits and statements contained

1 therein on file at the Board's offices regarding the allegations contained in the attached
2 Accusation, finds that the charges and allegations in the attached Accusation, are separately and
3 severally, found to be true and correct by clear and convincing evidence.

4 9. The Board finds that the actual costs for Investigation and Enforcement are \$4,191.25
5 as of October 15, 2020.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent David Garcia Hernandez has
8 subjected his Pharmacy Technician License Number TCH 168976 to discipline.

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

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

13 a. Respondent has subjected his Pharmacy Technician License to disciplinary action
14 under Code section 4301, subdivision (f), for unprofessional conduct, in that on or about
15 September 23, 2018, Respondent collided with a police officer's vehicle while driving under the
16 influence of alcohol at an excessive speed, causing bodily injury to another person.

17 b. Respondent has subjected his Pharmacy Technician License to disciplinary action
18 under Code section 4301, subdivision (h), in that on or about September 23, 2018, Respondent
19 used alcoholic beverages to an extent, and in a manner that was dangerous and injurious to
20 himself, and the public, when he operated a motor vehicle while impaired by alcohol.

21 c. Respondent has subjected his Pharmacy Technician License to disciplinary action
22 under Code section 4301, subdivision (k), in that on or about January 14, 2020 and on or about
23 March 22, 2010, Respondent was convicted of more than one misdemeanor and felony involving
24 the consumption of alcoholic beverages.

25 d. Respondent has subjected his Pharmacy Technician License to disciplinary action
26 under Code sections 490 and 4301, subdivision (l), for unprofessional conduct, in that on or about
27 January 14, 2020, Respondent was convicted of crimes that are substantially related to the
28 qualifications, functions, and duties of a licensed pharmacy technician.

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ORDER


IT IS SO ORDERED that Pharmacy Technician License Number TCH 168976, issued to Respondent David Garcia Hernandez, 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 February 4, 2021 at 5:00 p.m.

It is so ORDERED January 5, 2021

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

By 

Greg Lippe
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 ALVARO MEJIA
Deputy Attorney General
4 State Bar No. 216956
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9130
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
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. 6893

14 **DAVID GARCIA HERNANDEZ**
15 **3627 W. Camille St. #C**
Santa Ana, CA 92704

ACCUSATION

16 **Pharmacy Technician License Number**
17 **TCH 168976**

Respondent.

18
19
20 **PARTIES**

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

23 2. On or about March 13, 2019, the Board issued Pharmacy Technician License Number
24 TCH 168976 to David Garcia Hernandez (Respondent) on a 150-day temporary license basis,
25 pursuant to section 17520 of the Family Code. The Pharmacy Technician License was in full
26 force and effect at all times relevant to the charges brought herein and will expire on July 31,
27 2020, unless renewed.

28 ///

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
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.

12 (b) As used in this section, “license” includes “certificate,” “permit,”
13 “authority,” 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
the person to conduct with safety to the public the practice authorized by the license.

...

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

(l) The conviction of a crime substantially related to the qualifications,
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
States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive

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.

1 evidence of unprofessional conduct. In all other cases, the record of conviction shall
2 be conclusive evidence only of the fact that the conviction occurred. The board may
3 inquire into the circumstances surrounding the commission of the crime, in order to
4 fix the degree of discipline or, in the case of a conviction not involving controlled
5 substances or dangerous drugs, to determine if the conviction is of an offense
6 substantially related to the qualifications, functions, and duties of a licensee under this
7 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere is deemed to be a conviction within the meaning of this provision. The
9 board may take action when the time for appeal has elapsed, or the judgment of
10 conviction has been affirmed on appeal or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under
12 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
13 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
14 dismissing the accusation, information, or indictment.

15

16 **REGULATORY PROVISIONS**

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

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

22 (1) Nature and severity of the act(s) or offense(s).

23 (2) Total criminal record.

24 (3) The time that has elapsed since commission of the act(s) or offense(s).

25 (4) Whether the licensee has complied with all terms of parole, probation,
26 restitution or any other sanctions lawfully imposed against the licensee.

27 (5) Evidence, if any, of rehabilitation submitted by the licensee.

28 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.

29 **COST RECOVERY**

30 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **FACTUAL ALLEGATIONS**

6 13. On or about January 14, 2020, in a criminal proceeding entitled *People of the State of*
7 *California v. David Garcia Hernandez, Jr.*, in Orange County Superior Court, case number
8 18WF2130, Respondent was convicted on his pleas of guilty driving under the influence (DUI) of
9 alcohol causing injury (Veh. Code section 23153, subd. (a)), and DUI while having a blood
10 alcohol concentration (BAC) of 0.08 percent or more and causing bodily injury (Veh. Code
11 section 23153, subd. (b)), all of which were felony convictions. Respondent admitted to the prior
12 DUI on November 15, 2009, which resulted in a conviction on March 22, 2010, violating (Veh.
13 Code section 23152, subd. (a)). Respondent further admitted to special allegations in connection
14 with the felony charges, including inflicting great bodily injury upon another person while driving
15 under the influence of alcohol (Pen. Code section 12022.7, subd. (a)), having a BAC of 0.15
16 percent or more during the commission of DUI (Veh. Code section 23578). As a result of the
17 convictions, Respondent was denied probation and sentenced to serve 3 years in state prison.
18 Respondent was also ordered to pay restitution to the victim.

19 14. The circumstances that led to the convictions are that on or about September 23,
20 2018, officers with the California Highway Patrol (CHP) responded to a traffic collision
21 involving a possible intoxicated driver, i.e. Respondent- and an on-duty officer with the
22 Westminster Police Department. The officer involved in the collision had to be transported to a
23 nearby hospital for treatment. The driver and sole occupant of the vehicle later identified as
24 Respondent was found on the sidewalk near the collision. Upon contact with Respondent the
25 CHP officers detected the odor of alcohol emitting from Respondent's breath and person,
26 observed that his eyes were red and watery, and his speech was slow and slurred. During
27 questioning Respondent admitted to consuming alcohol. Based on their investigation, CHP
28 officers determined that Respondent caused the collision by driving into a parked patrol vehicle,

1 injuring an officer, while under the influence of alcohol. Respondent was subsequently arrested
2 and charged with felony DUI causing injury. During processing, Respondent was administered
3 three breathalyzer tests, which registered BAC results of .195%, .224% and .201%, respectively.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Unprofessional conduct)**

6 15. Respondent has subjected his Pharmacy Technician License to disciplinary action
7 under Code section 4301, subdivision (f), for unprofessional conduct, in that on or about
8 September 23, 2018, as described above in paragraphs 13 and 14, and incorporated here by this
9 reference, Respondent collided with a police officer's vehicle while driving under the influence of
10 alcohol at an excessive speed, causing bodily injury to another person.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Dangerous Use of Alcohol)**

13 16. Respondent has subjected his Pharmacy Technician License to disciplinary action
14 under Code section 4301, subdivision (h), in that on or about September 23, 2018, as described
15 above in paragraphs 13 and 14, which are incorporated herein by reference, Respondent used
16 alcoholic beverages to an extent, and in a manner that was dangerous and injurious to himself,
17 and the public, when he operated a motor vehicle while impaired by alcohol.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Multiple Alcohol Related Criminal Convictions)**

20 17. Respondent has subjected his Pharmacy Technician License to disciplinary action
21 under Code section 4301, subdivision (k), in that on or about January 14, 2020 and on or about
22 March 22, 2010, as described above in paragraphs 13 and 14, and below in paragraph 19, which
23 are incorporated herein by reference, Respondent was convicted of more than one misdemeanor
24 and felony involving the consumption of alcoholic beverages.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Substantially Related Criminal Conviction)**

27 18. Respondent has subjected his Pharmacy Technician License to disciplinary action
28 under Code sections 490 and 4301, subdivision (l), for unprofessional conduct, in that on or about

1 January 14, 2020, Respondent was convicted of crimes that are substantially related to the
2 qualifications, functions, and duties of a licensed pharmacy technician, as described above in
3 paragraph 14, and below in paragraph 19, which are incorporated herein by reference.

4 **DISCIPLINE CONSIDERATIONS**

5 19. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
6 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

7 a. On or about March 22, 2010, in a prior criminal proceeding titled *People of the State*
8 *of California v. David Garcia Hernandez, Jr.*, in Los Angeles County Superior Court, case
9 number 0JB02387, Respondent was convicted for violating Vehicle Code section 23152,
10 subdivision (a), driving under the influence of alcohol, a misdemeanor. Respondent was ordered
11 to informal probation for three years, serve four days in the custody of the Los Angeles County
12 Jail, attend and successfully complete an 18 month second-offender alcohol program and pay fees
13 and fines.

14 20. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
15 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

16 a. On or about September 22, 2004, in a prior criminal proceeding titled *People of the*
17 *State of California v. David Garcia Hernandez, Jr.*, in San Bernardino County Superior Court,
18 case number 72081DH, Respondent was convicted for violating Vehicle Code section 1460.1,
19 subdivision (a), driving on a suspended license; and Vehicle Code section 40508 (a), failure to
20 appear, both misdemeanors.

21 21. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
22 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

23 a. On or about October 1, 2002, in a prior criminal proceeding titled *People of the State*
24 *of California v. David Garcia Hernandez, Jr.*, in Los Angeles County Superior Court, case
25 number 1PM0242601, Respondent was convicted for violating Vehicle Code section 23152,
26 subdivision (b), driving under the influence of alcohol with a BAC of 0.08 percent or more, a
27 misdemeanor.

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1 22. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
2 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

3 a. On or about March 5, 2001, in a prior criminal proceeding titled *People of the State of*
4 *California v. David Garcia Hernandez, Jr.*, in Los Angeles County Superior Court, case number
5 0CR0573801, Respondent was convicted for violating Penal Code section 166, subdivision (a)(4),
6 contempt: disobey court order.

7 23. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
8 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

9 a. On or about November 21, 2000, in a prior criminal proceeding titled *People of the*
10 *State of California v. David Garcia Hernandez, Jr.*, in San Bernardino County Superior Court,
11 case number M503612DH, Respondent was convicted for violating Vehicle Code section
12 14601.1, subdivision (a), driving while license is suspended, a misdemeanor.

13 24. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
14 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

15 a. On or about March 10, 1998, in a prior criminal proceeding titled *People of the State*
16 *of California v. David Garcia Hernandez, Jr.*, in San Bernardino County Superior Court, case
17 number MVA020387, Respondent was convicted for violating Business and Professions Code
18 section 25658, subdivision (b), minor purchase liquor in bar; Business and Professions Code
19 section 25662, subdivision (a), minor in possession of alcohol, and Penal code section 529.5,
20 possession of deceptive government ID, all misdemeanors.

21 25. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
22 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

23 a. On or about October 23, 1997, in a prior criminal proceeding titled *People of the*
24 *State of California v. David Garcia Hernandez, Jr.*, in San Bernardino County Superior Court,
25 case number RIV81162, Respondent was convicted for violating Vehicle Code section 23153,
26 subdivision (a), driving under the influence of alcohol causing injury, a misdemeanor.

27 26. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
28 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

1 a. On or about September 18, 1997, in a prior criminal proceeding titled *People of the*
2 *State of California v. David Garcia Hernandez, Jr.*, in San Bernardino County Superior Court,
3 case number MWV039045, Respondent was convicted for violating Penal Code section 653,
4 subdivision (k), possess/sell switchblade, a misdemeanor.

5 27. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
6 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

7 a. On his original Pharmacy Technician License application, Respondent did not
8 disclose his full criminal history. As part of the application process, the Board questioned
9 Respondent on his reasoning for not disclosing his prior criminal convictions on his application.
10 On December 28, 2018, in response to the Board's inquiry, Respondent stated he did not list his
11 prior offenses (as referenced in paragraphs 19 through 26) on his application, as it was an
12 oversight since they happened a "very long time ago." Respondent claimed he was unaware that
13 offenses over seven years old needed to be disclosed to the Board. On January 21, 2019, the
14 Board approved Respondent's Pharmacy Technician License application.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician License Number TCH 168976, issued
19 to David Garcia Hernandez;
- 20 2. Ordering David Garcia Hernandez to pay the Board the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Code section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 8/5/2020

Anne Sodergren

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

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28 DOJ Matter ID: SD2020800061
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