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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:

13 **KEVIN MUNOZ DAVALOS**
14 **254 W. First Street**
Rialto, CA 92376

15 **and**

16 **KEVIN MUNOZ DAVALOS**
17 **CDCR Number, BM5231**
18 **John Benoit Detention Center, Indio Jail**
19 **Housing Unit 4W18**
20 **P.O. Box 1748**
21 **Indio, CA 92202**

Pharmacy Technician Registration Number
165427

Respondent.

Case No. 6954

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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23 **FINDINGS OF FACT**

24 1. On or about November 17, 2020, Complainant Anne Sodergren, in her official
25 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
26 Affairs, filed Accusation Number 6954 against Kevin Munoz Davalos (Respondent) before the
27 Board. (Accusation attached as Exhibit A.)

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1 2. On or about February 13, 2018, the Board issued Pharmacy Technician Registration
2 No. 165427 to Respondent. The Pharmacy Technician Registration was in full force and effect at
3 all times relevant to the charges brought in Accusation Number 6954 and will expire on February
4 28, 2022, unless renewed.

5 3. On or about December 4, 2020, Respondent was served by Certified and First Class
6 Mail copies of the Accusation Number 6954, Statement to Respondent, Notice of Defense,
7 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
8 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
9 Code section 4100, is required to be reported and maintained with the Board. Respondent's
10 address of record was and is: 254 W. First Street, Rialto, CA 92376; and Respondent was also
11 served at an alternate address at Kevin Munoz Davalos, CDCR Number, BM5231, John Benoit
12 Detention Center, Indio Jail, Housing Unit 4W18, P.O. Box 1748, Indio, CA 92202.

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
15 124.

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

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

22 6. The Board takes official notice of its records and the fact that Respondent failed to
23 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
24 waived his right to a hearing on the merits of Accusation No. 6954.

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

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

 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

1 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
2 as well as taking official notice of all the investigatory reports, exhibits and statements contained
3 therein on file at the Board's offices regarding the allegations contained in Accusation No. 6954,
4 finds that the charges and allegations in Accusation Number 6954, are separately and severally,
5 found to be true and correct by clear and convincing evidence.

6 9. The Board finds that the actual costs for Investigation and Enforcement are \$2,173.75
7 as of January 5, 2021.

8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Kevin Munoz Davalos has
10 subjected his Pharmacy Technician Registration No. 165427 to discipline.

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

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

15 a. Respondent has subjected his pharmacy technician registration to discipline under
16 Code sections 490 and 4301, subdivision (l), in that on October 27, 2020, in a criminal
17 proceeding, Respondent was convicted on his plea of guilty to violating Penal Code section
18 288.3, subdivision (A), contacting a minor with intent to commit a crime, and Penal Code section
19 518, extortion, both felonies.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration Number 165427, issued to Respondent Kevin Munoz Davalos, 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 March 12, 2021 at 5:00 p.m..

It is so ORDERED February 10, 2021

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

By



Greg Lippe
Board President

82670670
DOJ Matter ID:SD2020801603

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

13 In the Matter of the Accusation Against:

Case No. 6954

14 **KEVIN MUNOZ DAVALOS**
15 **254 W. First Street**
Rialto, CA 92376

ACCUSATION

16 **Pharmacy Technician Registration No.**
17 **165427**

18 Respondent.

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22 **PARTIES**

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

25 2. On or about February 13, 2018, the Board of Pharmacy issued Pharmacy Technician
26 Registration Number 165427 to Kevin Munoz Davalos (Respondent). The Pharmacy Technician
27 Registration was in full force and effect at all times relevant to the charges brought herein and
28 will expire on February 28, 2022, unless renewed.

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 unless otherwise indicated.

4. Section 4300, subdivision (a), of the Code provides that every license issued by the Board 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 482 of the Code states:

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

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

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

7. Section 4301 of the Code states:

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

. . . .

(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 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 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 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.

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REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1769, states:

...

(b) 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.

9. 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

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or

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

5 **CAUSE FOR DISCIPLINE**

6 **(October 27, 2020 Conviction for Extortion and Contacting a Minor to Commit Extortion**
7 **on July 23, 2018)**

8 11. Respondent has subjected his pharmacy technician registration to discipline under
9 Code sections 490 and 4301, subdivision (l), in that on October 27, 2020, in a criminal
10 proceeding entitled *The People of the State of California v. Kevin Munoz Davalos*, in the
11 Riverside County Superior Court, Case Number RIF20000874, Respondent was convicted on his
12 plea of guilty to violating Penal Code section 288.3, subdivision (A), contacting a minor with
13 intent to commit a crime, and Penal Code section 518, extortion, both felonies.

14 12. The facts leading to the conviction are as follows:

15 On or about July 21, 2018, Respondent contacted Jane Doe (Doe), a then 13-year-old girl
16 via Instagram message. Respondent sent messages inviting Doe to speak with a local music artist
17 “Lil Xan” if she was willing to send nude photographs to Respondent. Respondent told Doe that
18 if she did not comply, he would find another fan who would. Respondent also contacted Doe via
19 the phone app “Kik” which is used for anonymous messaging with the same request. Respondent
20 told Doe via Kik message that he would delete their messages after they were done, and asked
21 Doe if she was alone. Respondent originally asked for normal clear photographs, but then asked
22 for “a full selfie, no bra.” Later, Respondent also asked Doe, “how does your ass look turned
23 around? Let me see without undies.” Doe sent approximately five photographs to Respondent via
24 the app, including some topless photographs and three short videos. Doe’s face was visible in all
25 photographs and videos.

26 13. Respondent messaged Doe over several days. Respondent then sent Doe a
27 message that “Cool. So [Doe]. Look ur gonna listen to me ok? You are going to do anything I
28 say or when school starts I will post all over the school. As longn[sic] as u do what I say I won’t

1 post anything.” Respondent demanded another topless photograph and Doe complied.
2 Respondent asked if Doe had any siblings and Doe reported she had a 10-year-old brother.
3 Respondent messaged Doe, “U want me to delete everything and to not post ever. ? U have to do
4 stuff with ur brother for only 2 minutes. ONLY 2 minutes. I promise to delete everything and not
5 post ever . But u have to do 2 minutes anything with ur brother.” Doe stated she would, though
6 she did not. Respondent messaged Doe, “If tell [brother] it’s a game like a doctor game. Ur
7 gonna do anything got it?” Doe became scared and did not reply back. The next morning, on July
8 24, 2018, Doe told her mother about the exchange. Doe’s mother then took Doe’s phone and
9 went to the Riverside County Sheriff to report the incident.

10 14. On or about March 7, 2019, Riverside County Sheriff’s Officers executed a search
11 warrant on Respondent’s residence for his electronic devices. Officers seized two laptop
12 computers, two desktop computers, and four cell phones. The devices were sent to the CATCH
13 cyber lab for analysis. One cell phone showed records of messages matching the above phone
14 messages from Doe. Officers asked Respondent if the phone with the message records was his,
15 and he admitted it was, though denied sending the messages. Respondent stated that no one else
16 had access to his phone. Respondent was then placed under arrest.

17 15. As a result of the convictions, on October 27, 2020, Respondent was sentenced to
18 be committed to the custody of the California State Prison for two years.

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacy Technician Registration Number 165427, issued
23 to Kevin Munoz Davalos;

24 2. Ordering Kevin Munoz Davalos to pay the Board of Pharmacy the reasonable costs of
25 the investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3; and,

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

DATED: 11/16/2020

Signature on File

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

SD2020801603