

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:

DAVID HUIZAR
5913 Nogal Avenue, A.
Bakersfield, CA 93309

Pharmacy Technician Registration No. TCH
150247

Respondent.

Case No. 7021

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 11, 2020, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 7021 against David Huizar (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 14, 2015, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 150247 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 7021 and will expire on February 28, 2021, unless renewed.

///

1 3. On or about September 16, 2020, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 7021, 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:

7 **5913 Nogal Avenue, A.**

8 **Bakersfield, CA 93309.**

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 him of the Accusation, and therefore
19 waived his right to a hearing on the merits of Accusation No. 7021.

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. 7021,
finds that the charges and allegations in Accusation No. 7021, are separately and severally, found
to be true and correct by clear and convincing evidence.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 150247, issued to Respondent David Huizar, 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 January 20, 2021 at 5:00 p.m.

It is so ORDERED December 21, 2020

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

By



Greg Lippe
Board President

63729293.DOCX
DOJ Matter ID:LA2020602291

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 CARL W. SONNE
Senior Assistant Attorney General
3 LINDA L. SUN
Supervising Deputy Attorney General
4 State Bar No. 207108
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6283
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. 7021

13 **DAVID HUIZAR**
14 **5913 Nogal Avenue, A.**
Bakersfield, CA 93309

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **150247**

Respondent.

17
18 **PARTIES**

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

21 2. On or about August 14, 2015, the Board issued Pharmacy Technician Registration
22 Number TCH 150247 to David Huizar (Respondent). The Pharmacy Technician Registration was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 February 28, 2021, unless renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

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

28 ///

1 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
2 cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to
3 proceed with a disciplinary action during the period within which the license may be renewed,
4 restored, reissued or reinstated.

5 5. Section 490 states, in pertinent part:

6 “(a) In addition to any other action that a board is permitted to take against a licensee, a
7 board may suspend or revoke a license on the ground that the licensee has been convicted of a
8 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
9 or profession for which the license was issued.

10 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
11 discipline a licensee for conviction of a crime that is independent of the authority granted under
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
13 of the business or profession for which the licensee’s license was issued.

14 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. An action that a board is permitted to take
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
18 made suspending the imposition of sentence, irrespective of a subsequent order under Section
19 1203.4 of the Penal Code.

20 6. Section 493 states:

21 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
22 the department pursuant to law to deny an application for a license or to suspend or revoke a
23 license or otherwise take disciplinary action against a person who holds a license, upon the
24 ground that the applicant or the licensee has been convicted of a crime substantially related to the
25 qualifications, functions, and duties of the licensee in question, the record of conviction of the
26 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
27 and the board may inquire into the circumstances surrounding the commission of the crime in
28 order to fix the degree of discipline or to determine if the conviction is substantially related to the

1 qualifications, functions, and duties of the licensee in question. As used in this section, "license"
2 includes "certificate," "permit," "authority," and "registration."

3 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
4 subject to discipline, including suspension or revocation.

5 8. Section 4300.1 states:

6 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
7 operation of law or by order or decision of the board or a court of law, the placement of a license
8 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
9 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
10 proceeding against, the licensee or to render a decision suspending or revoking the license."

11 9. Section 4301 states:

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

14

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

17

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

21

22 (l) The conviction of a crime substantially related to the qualifications,
23 functions, and duties of a licensee under this chapter. The record of conviction of a
24 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
25 States Code regulating controlled substances or of a violation of the statutes of this
26 state regulating controlled substances or dangerous drugs shall be conclusive
27 evidence of unprofessional conduct. In all other cases, the record of conviction shall
28 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

1 board may take action when the time for appeal has elapsed, or the judgment of
2 conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under
4 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
5 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
6 dismissing the accusation, information, or indictment.

7 **REGULATORY PROVISIONS**

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

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

16 **COST RECOVERY**

17 11. Section 125.3 provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licensee found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Conviction of a Substantially Related Crime)**

25 12. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
26 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
27 was convicted of a crime substantially related to the qualifications, functions, and duties of a
28 pharmacy technician. On or about March 3, 2020, after a plea of nolo contendere, Respondent
was convicted of one (1) misdemeanor count of violating Vehicle Code section 23152,
subdivision (b) (driving while having 0.08% or more, by weight, of alcohol in his blood) and one
(1) misdemeanor count of violating Vehicle Code section 20002, subdivision (a) (hit and run:
property damage) in the criminal proceeding entitled: *The People of the State of California v.*
David Huizar (Super. Ct. Kern County, 2020, No. SM121900A). The court sentenced Respondent
to serve ten (10) days in jail and placed him on 36 months of probation with terms and conditions.

1 The circumstances surrounding the conviction are that on or about October 7, 2019, officers
2 responded to a single rollover traffic collision. Officers were on route when they received an
3 update that a witness observed another person drive by and pick up Respondent and they fled the
4 scene of the accident. Officers located the Respondent in the getaway vehicle and conducted a
5 traffic stop. Upon contact with the Respondent, officers observed him to display objective
6 symptoms of alcohol intoxication. Respondent submitted to a breath sample, which resulted in a
7 .230% and .223% blood alcohol concentration. On or about April 20, 2020, Respondent's
8 criminal court probation was revoked and a bench warrant was issued for failure to complete the
9 Victim Impact Panel.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
13 that on or about October 7, 2019, Respondent used alcoholic beverages to the extent or in a
14 manner as to be dangerous or injurious to himself, another person, or to the public. Complainant
15 refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, as
16 though set forth fully.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Acts Involving Moral Turpitude)**

19 14. Respondent is subject to disciplinary action section 4301, subdivision (f), in that
20 Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit. Complainant
21 refers to and by this reference incorporates, the allegations set forth above in paragraph 12, as
22 though set forth fully.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 150247,
27 issued to David Huizar;

28 ///

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

2. Ordering David Huizar to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 9/11/2020

Anne Sodergren

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

LA2020602291
63561920.docx