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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. 7051

13 **DONALD ENSLEN BIBONA**
14 **12 Palomino Lane**
Ladera Ranch, CA 92694

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician Registration No. TCH**
16 **116132**

[Gov. Code, §11520]

17 Respondent.
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21 **FINDINGS OF FACT**

22 1. On or about January 14, 2021, Complainant Anne Sodergren, in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
24 Accusation No. 7051 against Donald Enslen Bibona (Respondent) before the Board of Pharmacy.
25 (Accusation attached as Exhibit A.)

26 2. On or about October 20, 2011, the Board of Pharmacy (Board) issued Pharmacy
27 Technician Registration No. TCH 116132 to Respondent. The Pharmacy Technician Registration
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1 was in full force and effect at all times relevant to the charges brought in Accusation No. 7051
2 and will expire on February 28, 2021, unless renewed.

3 3. On or about January 25, 2021, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 7051, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of
8 record was and is: 12 Palomino Lane, Ladera Ranch, CA 92694.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
11 124.

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

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

18 6. The Board takes official notice of its records and the fact that Respondent failed to
19 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
20 waived his right to a hearing on the merits of Accusation No. 7051.

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

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

26 8. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 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
therein on file at the Board's offices regarding the allegations contained in Accusation No. 7051,

1 finds that the charges and allegations in Accusation No. 7051, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 9. The Board finds that the actual costs for Investigation and Enforcement are \$3,002.50
4 as of February 19, 2021.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Donald Enslen Bibona has
7 subjected his Pharmacy Technician Registration No. TCH 116132 to discipline.

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

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

12 a. Respondent engaged in unprofessional conduct by committing an act involving moral
13 turpitude, deceit, or corruption, thereby violating Business and Professions Code section 4301,
14 subdivision (f); and

15 b. Respondent engaged in unprofessional conduct by being convicted of a crime
16 substantially related to the qualifications, functions and duties of a pharmacy technician, thereby
17 violating Business and Professions Code, section 4301, subdivision (l).

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 116132, issued to Respondent Donald Enslen Bibona, 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 April 28, 2021.

It is so ORDERED on March 29, 2021.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Greg Lippe
Board President

91347943.DOCX
DOJ Matter ID:OK2020900439

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHEILA J. VASANTHARAM
Deputy Attorney General
4 State Bar No. 289217
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-1006
Facsimile: (510) 622-2270
7 E-mail: Sheila.Vasantharam@doj.ca.gov
Attorneys for Complainant

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. 7051

14 **DONALD ENSLEN BIBONA**
15 **12 Palomino Lane**
Ladera Ranch, CA 92694

ACCUSATION

16 **Pharmacy Technician Registration No. TCH**
17 **116132**

Respondent.

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21 **PARTIES**

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

24 2. On or about October 20, 2011, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 116132 to Donald Enslen Bibona (Respondent). The Pharmacy
26 Technician Registration was in full force and effect at all times relevant to the charges brought in
27 this Accusation and will expire on February 28, 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. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6. 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

7. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of

unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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 not.

...

(I) 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.

REGULATORY PROVISIONS

8. 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.

COST RECOVERY

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

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1 **FACTUAL ALLEGATIONS**

2 10. On or about July 17, 2020, in *People v. Donald Bibona*, Orange County Superior
3 Court, Case No. 18HF0042, Respondent pled guilty to and the court convicted him of one
4 enhanced count of arson of an inhabited property (Pen. Code, §§ 451, subd. (b) 451.5, subd.
5 (a)(5)) and one count of possession of flammable material with the intent to set fire to and burn a
6 structure (Pen. Code, § 453, subd. (a)), both felonies. The court sentenced Respondent to three
7 years in state prison, with credit for 1,066 days served. The court also ordered Respondent to pay
8 fines, register as an arson offender, and pay restitution. The court prohibited him from possessing
9 a firearm. On August 13, 2020, Respondent was released from state prison.

10 11. The underlying offense occurred on or about January 3, 2018, when a witness saw
11 Respondent walking on the street near a residence in Mission Viejo, California with a gasoline
12 container. Respondent poured gasoline on the bushes located near the residence's garage. The
13 witness took a picture of Respondent. The owner of the residence, who was sleeping in the
14 house, heard the smoke alarm go off, saw smoke, and saw his neighbors attempting to put out a
15 fire. The owner of the residence identified Respondent from the witness's picture because the
16 owner knew Respondent as a family friend. Officers with the Tustin Police Department contacted
17 Respondent at his home. Respondent admitted that he had been in Mission Viejo earlier that day.
18 Officers found three gasoline cans in the back of Respondent's vehicle and a lighter in
19 Respondent's pocket. Officers also noticed that Respondent smelled of gasoline and that he was
20 still wearing the same clothes from the picture taken by the witness. The officers arrested
21 Respondent.

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Unprofessional Conduct: Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or
24 Corruption)

25 12. Respondent's pharmacy technician registration is subject to discipline because he
26 engaged in unprofessional conduct by committing an act involving moral turpitude, dishonesty,
27 fraud, deceit, or corruption. (Bus. & Prof. Code, § 4301, subd. (f).) The circumstances are
28 further explained in paragraphs 10 to 11, above.

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