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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. 7114

13 **ELDER HUMBERTO CHINCHILLA**  
14 **7321 Petrol St.**  
15 **Paramount, CA 90723**

**DEFAULT DECISION AND ORDER**

16 **Pharmacy Technician License No. TCH**  
17 **131634**

[Gov. Code, §11520]

18 Respondent.

19  
20 **FINDINGS OF FACT**

21 1. On or about June 2, 2021, Complainant Anne Sodergren, in her official capacity as  
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
23 Accusation No. 7114 against Elder Humberto Chinchilla (Respondent) before the Board of  
24 Pharmacy. (Accusation attached as Exhibit A.)

25 2. On or about April 11, 2013, the Board of Pharmacy (Board) issued Pharmacy  
26 Technician License No. TCH 131634 to Respondent. The Pharmacy Technician License was in  
27 full force and effect at all times relevant to the charges brought in Accusation No. 7114 and will  
28 expire on March 31, 2021, unless renewed. This lapse in licensure, however, pursuant to Business

1 and Professions Code section 4300.1 does not deprive the Board of its authority to institute or  
2 continue this disciplinary proceeding.

3 3. On or about June 3, 2021, Respondent was served by Certified and First Class Mail  
4 copies of the Accusation No. 7114, Statement to Respondent, Notice of Defense, Request for  
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
7 is required to be reported and maintained with the Board. Respondent's address of record was  
8 and is: 7321 Petrol St. Paramount, CA 90723.

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. 7114.

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. 7114,  
finds that the charges and allegations in Accusation No. 7114, 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 \$ 2013.75 as of September 30, 2021.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Elder Humberto Chinchilla has subjected his Pharmacy Technician License No. TCH 131634 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 License 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. Unprofessional conduct—possession of a controlled substance or dangerous drug without a prescription (Business and Professions Code sections 4060 and 4301, subdivisions (j) and (o));

b. Unprofessional conduct—self-administration of a controlled substance or dangerous drug (Business and Professions Code section 4301, subdivisions (h) and (j)); Health Safety Code sections 11550, subdivision (a), and 11170); and

c. Unprofessional conduct—acts that would warrant denial of license (Business and Professions Code section 4301, subdivision (p)).

## ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 131634, issued to Respondent Elder Humberto Chinchilla, 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.

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1 This Decision shall become effective at 5:00 p.m. on December 22, 2021.

2 It is so ORDERED on November 22, 2021.

3 BOARD OF PHARMACY  
4 DEPARTMENT OF CONSUMER AFFAIRS  
5 STATE OF CALIFORNIA

6  
7 DOJ Matter ID:LA2021601097

By 

8 Attachment:  
9 Exhibit A: Accusation

Seung W. Oh, Pharm D.  
Board President

# Exhibit A

Accusation

(ELDER HUMBERTO CHINCHILLA)

1 ROB BONTA  
Attorney General of California  
2 CARL W. SONNE  
Senior Assistant Attorney General  
3 SHAWN P. COOK  
Supervising Deputy Attorney General  
4 State Bar No. 117851  
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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. 7114

13 **ELDER HUMBERTO CHINCHILLA**  
14 **7321 Petrol St.**  
**Paramount, CA 90723**

**ACCUSATION**

15 **Pharmacy Technician License No. TCH**  
16 **131634**

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, Department of Consumer Affairs.

21 2. On or about April 11, 2013, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician License Number TCH 131634 to Elder Humberto Chinchilla (Respondent). The  
23 Pharmacy Technician License was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on March 31, 2023, unless renewed.

25 **JURISDICTION**

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 (Code) unless otherwise  
28 indicated.

1           4.     Section 4300 of the Code provides, in pertinent part, that every license issued by the  
2 board is subject to discipline, including suspension or revocation.

3           5.     Section 4300.1 of the Code states:

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

### 10                                 STATUTORY PROVISIONS

11           6.     Section 4060 of the Code provides, in pertinent part:

12                 “No person shall possess any controlled substance, except that furnished to a person upon  
13 the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug  
14 order issued by a certified nurse midwife, . . . a nurse practitioner. . . , or a physician assistant. . .”

15           7.     Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
16 against any holder of a license that is guilty of “unprofessional conduct,” defined to include, but  
17 not be limited to, any of the following:

18                 . . .

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

24                 . . .

25                 “(j) The violation of any of the statutes of this state, of any other state, or of the United  
26 States regulating controlled substances and dangerous drugs

27                 . . .

28                 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or 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, including regulations established by

1 the board or by any other state or federal regulatory agency.

2 (p) Actions or conduct that would have warranted denial of a license.”

3 8. Health and Safety Code section 11170, states:

4 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

5 9. California Health and Safety Code Section 11350, subsection (a), states:

6 “Except as otherwise provided in this division, every person who possesses (1) any  
7 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of  
8 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
9 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
10 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
11 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
12 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more  
13 than one year, except that such person shall instead be punished pursuant to subdivision (h) of  
14 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense  
15 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of  
16 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290  
17 of the Penal Code.”

18 10. California Health and Safety Code section 11550, subsection (a), states:

19 “A person shall not use, or be under the influence of any controlled substance that is (1)  
20 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
21 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified  
22 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)  
23 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in  
24 Schedule III, IV, or V, except when administered by or under the direction of a person licensed  
25 by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of  
26 the defense to show that it comes within the exception. A person convicted of violating this  
27 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not more than

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1 one year in a county jail. The court may also place a person convicted under this subdivision on  
2 probation for a period not to exceed five years.”

### 3 **COST RECOVERY**

4 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
5 administrative law judge to direct a licentiate found to have committed a violation or violations of the  
6 licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of  
7 the case, with failure of the licentiate to comply subjecting the license to not being renewed or  
8 reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a  
9 stipulated settlement.

### 10 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

11 12. “Cocaine,” is a Schedule II controlled substance as designated by California Health  
12 and Safety Code section 11055, subsection (b)(6) and is categorized a dangerous drug, pursuant  
13 to section 4022 of the Code.

14 13. “Nitrous Oxide,” is a dissociative anaesthetic and has been found to produce  
15 dissociation of the mind from the body (a sense of floating), distorted perceptions and in rare  
16 cases, visual hallucinations and is categorized a dangerous drug, pursuant to section 4022 of the  
17 Code.

### 18 **FACTUAL ALLEGATIONS**

19 14. On or about March 10, 2020, officers from the Los Angeles County Sheriff’s  
20 Department officers observed a running vehicle stopped at a curb in an area known for vehicle  
21 burglaries and a high rate of drug activity. The windows of the vehicle were foggy and the  
22 headlights were engaged. As the officer made a U-turn in order to contact the occupants of the  
23 vehicle, the vehicle pulled away. Subsequently, the officer initiated a traffic enforcement stop of  
24 the vehicle.

25 15. Upon approaching the vehicle, the officers observed Respondent, a passenger sitting  
26 in the rear driver’s side of the vehicle. In addition, the officers observed a red nitrous oxide tank  
27 with condensation on the exterior, seated on the rear passenger floor board and multiple balloons

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1 scattered along the rear seats. Based on previous nitrous oxide arrests by the officers, it is known  
2 that the tank becomes cold and condensation builds up on the tank when recently used.  
3 Additionally, the balloons are used as a method to extract the nitrous oxide from the tank and  
4 inhale it.

5 16. Respondent admitted that he had just finished inhaling nitrous oxide and was about to  
6 use cocaine. During an inventory search of the vehicle, an officer recovered a black wallet from  
7 the rear of the passenger floor board where Respondent was seated. Inside the wallet, an officer  
8 found a small plastic baggie containing a white powdery substance resembling cocaine, along  
9 with Respondent's driver's license. Respondent identified the substance as cocaine and disclosed  
10 that he paid \$70.00 for it, but would not disclosed where he had purchased it. Respondent  
11 admitted that he typically uses cocaine, but would not provide further information.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct: Possession of a Controlled Substance**  
14 **or Dangerous Drug Without a Prescription)**

15 17. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and  
16 (o), in conjunction with section 4060, in that Respondent unlawfully possessed a controlled  
17 substance or dangerous drug. The circumstances are as alleged in the preceding paragraphs 14  
18 through 16, which are incorporated herein by reference as though fully set forth.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct: Self Administration of**  
21 **a Controlled Substance or Dangerous Drug)**

22 18. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and  
23 (j), in conjunction with Health and Safety Code sections 11550, subd. (a) and 11170 in that  
24 Respondent unlawfully self-administered a controlled substance or dangerous drug. The  
25 circumstances are as alleged in the preceding paragraphs 14 through 16, which are incorporated  
26 herein by reference as though fully set forth.

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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Acts that Would Warrant Denial of License)**

19. Respondent is subject to disciplinary action under section 4301, subdivision (p), in that Respondent’s conduct as alleged in the preceding paragraphs 14 through 18, which are incorporated herein by reference as though fully set forth, would have warranted denial of a pharmacy technician registration.

**PRAYER**

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

- 1. Revoking or suspending Pharmacy Technician License Number TCH 131634, issued to Elder Humberto Chinchilla;
- 2. Ordering Elder Humberto Chinchilla 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: 6/2/2021

Signature on File  
\_\_\_\_\_  
ANNE SODERGREN  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2021601097  
Jz(5/10/21)