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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. 7179

13 **LEN A. SHLAIN**
14 **11332 Dona Lola Drive**
Studio City, CA 91604

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician Registration No. TCH**
16 **7291**

[Gov. Code, §11520]

17 Respondent.
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19 **FINDINGS OF FACT**

20 1. On or about September 10, 2021, Complainant Anne Sodergren, in her official
21 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
22 Affairs, filed Accusation No. 7179 against Len A. Shlain (Respondent) before the Board.
23 (Accusation attached as Exhibit A.)

24 2. On or about May 13, 1993, the Board issued Pharmacy Technician Registration No.
25 TCH 7291 to Respondent. The Pharmacy Technician Registration was in full force and effect at
26 all times relevant to the charges brought in Accusation No. 7179 and will expire on December 31,
27 2022, unless renewed.

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1 3. On or about September 22, 2021, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 7179, 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 11332 Dona Lola Drive
8 Studio City, CA 91604.

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. 7179.

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. 7179,
finds that the charges and allegations in Accusation No. 7179, are separately and severally, found
to be true and correct by clear and convincing evidence.

1 9. The Board finds that the actual costs for Investigation and Enforcement are \$1,233.75
2 as of December 1, 2021.

3 **DETERMINATION OF ISSUES**

4 1. Based on the foregoing findings of fact, Respondent Len A. Shlain has subjected his
5 Pharmacy Technician Registration No. TCH 7291 to discipline.

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

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

10 a. Business and Professions Code section 490 and 4301, subdivision (f), in conjunction
11 with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a
12 crime substantially related to the qualifications, functions, or duties of a licensee or a registrant.
13 The circumstances surrounding the conviction are outlined in more detail in the accusation.

14 b. Business and Professions Code section 4301, subdivision (f), in conjunction with
15 California Code of Regulations, title 16, section 1770, in that Respondent committed fraudulent
16 acts in the course of his relations as a licensee. The circumstances surrounding the conviction are
17 outlined in more detail in the accusation.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 7291, issued to Respondent Len A. Shlain, 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 February 2, 2022.

It is so ORDERED on January 3, 2022.



Seung Oh
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

64721682.DOCX
DOJ Matter ID:LA2021603247

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

12 In the Matter of the Accusation Against:

Case No. 7179

13 **LEN A. SHLAIN**
14 **11332 Dona Lola Drive**
Studio City, CA 91604

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **7291**

17 Respondent.

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19 **PARTIES**

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

22 2. On or about May 13, 1993, the Board issued Pharmacy Technician Registration
23 Number TCH 7291 to Len A. Shlain (Respondent). The Pharmacy Technician Registration was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 December 31, 2022, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

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

1 4. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 5. Section 4300 of the Code states:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

16 (c) The board may refuse a license to any applicant guilty of unprofessional
17 conduct. The board may, in its sole discretion, issue a probationary license to any
18 applicant for a license who is guilty of unprofessional conduct and who has met all
19 other requirements for licensure. The board may issue the license subject to any
20 terms or conditions not contrary to public policy, including, but not limited to, the
21 following:

22 (1) Medical or psychiatric evaluation.

23 (2) Continuing medical or psychiatric treatment.

24 (3) Restriction of type or circumstances of practice.

25 (4) Continuing participation in a board-approved rehabilitation program.

26 (5) Abstention from the use of alcohol or drugs.

27 (6) Random fluid testing for alcohol or drugs.

28 (7) Compliance with laws and regulations governing the practice of pharmacy.

 (d) The board may initiate disciplinary proceedings to revoke or suspend any
probationary certificate of licensure for any violation of the terms and conditions of
probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

 (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.

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.

....

(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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1 **REGULATORY PROVISIONS**

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

3 For the purpose of denial, suspension, or revocation of a personal or facility
4 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
5 Professions Code, a crime or act shall be considered substantially related to the
6 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.

7 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Conviction of a Substantially Related Crime)**

16 10. Respondent is subject to disciplinary action under Code section 490 and 4301,
17 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1770, in that
18 Respondent was convicted of a crime substantially related to the qualifications, functions or
19 duties of a licensee or registrant. Specifically, on or about March 1, 2021, Respondent pled guilty
20 and was convicted of one (1) felony count of violating Penal Code section 487, subdivision (a)
21 (grand theft) in the criminal proceeding entitled: *The People of the State of California v. Len A.*
22 *Shlain* (Super. Ct. L.A. County, 2021, No. BA476057). The court placed Respondent on
23 probation for two (2) years with terms and conditions. The circumstances surrounding the
24 conviction are that between September 2016 through December 2017, Respondent systematically
25 defrauded Medi-Cal by billing and submitting claims for the high-cost brand medication, Abilify,
26 while purchasing and dispensing the cheaper generic medication, Aripiprazole, to Medi-Cal
27 beneficiaries to generate higher profits through the submission of fraudulent claims.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

3 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
4 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
5 committed fraudulent acts in the course of his relations as a licensee. Complainant refers to, and
6 by this reference, incorporates, the allegations set forth above in paragraph 10, as though fully set
7 forth herein.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 7291,
12 issued to Len A. Shlain;
- 13 2. Ordering Len A. Shlain to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and,
- 16 3. Taking such other and further action as deemed necessary and proper.
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18

19 DATED: 9/10/2021
20 _____

Signature on File

21 ANNE SODERGREN
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 *Complainant*

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