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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. 7180

13 **JIMENA G. GAYTAN FLORES**
14 **910 E. Stockton Ave.**
Compton, CA 90221

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician License No. TCH**
16 **175846**

[Gov. Code, §11520]

17 Respondent.
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21 **FINDINGS OF FACT**

22 1. On or about October 17, 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. 7180 against Jimena G. Gaytan Flores (Respondent) before the Board of
25 Pharmacy. (Accusation attached as Exhibit A.)

26 2. On or about February 18, 2020, the Board of Pharmacy (Board) issued Pharmacy
27 Technician License No. TCH 175846 to Respondent. The Pharmacy Technician License was in
28 full force and effect at all times relevant to the charges brought in Accusation No. 7180 and

1 expired on October 31, 2021, without being renewed. This lapse in licensure, however, pursuant
2 to Business and Professions Code section 118(b) and/or agency-specific statute does not deprive
3 the [Board] of its authority to institute or continue this disciplinary proceeding.

4 3. On or about November 2, 3, and 24, 2021, Respondent was served by Certified and
5 First Class Mail copies of the Accusation No. 7180, Statement to Respondent, Notice of Defense,
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
7 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
8 Code section 4100, is required to be reported and maintained with the Board. Respondent's
9 address of record was and is:

10 3572 Norton Ave., #E

11 Lynwood, CA 90262.

12 4. On or about November 24, 2021, Respondent was served by Certified and First Class
13 Mail copies of the Accusation No. 7180, Statement to Respondent, Notice of Defense, Request
14 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
15 11507.7) at Respondent's alternate address of:

16 910 E. Stockton Ave.

17 Compton, CA 90221.

18 5. Service of the Accusation was effective as a matter of law under the provisions of
19 Government Code section 11505(c) and/or Business and Professions Code section 124.

20 6. Government Code section 11506(c) states, in pertinent part:

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

26 7. The Board takes official notice of its records and the fact that Respondent failed to
27 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
28 waived her right to a hearing on the merits of Accusation No. 7180.

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1 8. California Government Code section 11520(a) states, in pertinent part:

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

5 9. Pursuant to its authority under Government Code section 11520, the Board finds
6 Respondent is in default. The Board will take action without further hearing and, based on the
7 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
8 as well as taking official notice of all the investigatory reports, exhibits and statements contained
9 therein on file at the Board's offices regarding the allegations contained in Accusation No. 7180,
10 finds that the charges and allegations in Accusation No. 7180, are separately and severally, found
11 to be true and correct by clear and convincing evidence.

12 10. The Board finds that the actual costs for Investigation and Enforcement are \$2,420.00
13 as of January 27, 2022.

14 **DETERMINATION OF ISSUES**

15 1. Based on the foregoing findings of fact, Respondent Jimena G. Gaytan Flores has
16 subjected her Pharmacy Technician License No. TCH 175846 to discipline.

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

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

21 a. Conviction of a Substantially Related Crime – May 4, 2021, Possession for Sale of a
22 Controlled Substance – Methamphetamine, violating Business and Professions Code sections
23 490, 4300, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16,
24 section 1770.

25 b. Possession of Controlled Substances/Dangerous Drugs, violating Business and
26 Professions Code sections 4300 and 4301, subdivision (o), for violating section 4060.

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1 c. Furnish Controlled Substances/Dangerous Drugs, violating Business and Professions
2 Code sections 4300 and 4301, subdivision (o), for violating sections 4051, subdivision (a),
3 and 4059.

4 d. Violating Drug Statutes, violating Business and Professions Code sections 4300
5 and 4301, subdivision (j).

6 e. Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption, violating
7 Business and Professions Code sections 4300 and 4301, subdivision (f).

8 **ORDER**

9 IT IS SO ORDERED that Pharmacy Technician License No. TCH 175846, issued to
10 Respondent Jimena G. Gaytan Flores, is revoked.

11 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
12 written motion requesting that the Decision be vacated and stating the grounds relied on within
13 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
14 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

15 This Decision shall become effective at 5 p.m. on April 13, 2022.

16 It is so ORDERED on March 14, 2022.

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18 BOARD OF PHARMACY
19 DEPARTMENT OF CONSUMER AFFAIRS
20 STATE OF CALIFORNIA

21 64842775.DOCX
22 DOJ Matter ID:LA2021603270

By



23 Attachment:
24 Exhibit A: Accusation

Seung W. Oh, Pharm. D
Board President

Exhibit A

Accusation

1 ROB BONTA
Attorney General of California
2 SHAWN P. COOK
Supervising Deputy Attorney General
3 NANCY A. KAISER
Supervising Deputy Attorney General
4 State Bar No. 192083
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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. 7180

13 **JIMENA G. GAYTAN FLORES**
14 **3572 Norton Ave., #E**
Lynwood, CA 90262

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **175846**

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, Department of Consumer Affairs (Board).

22 2. On or about February 18, 2020, the Board issued Pharmacy Technician License
23 Number TCH 175846 to Jimena G. Gaytan Flores (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2021, unless renewed.

26 **JURISDICTION**

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.

4. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or revoked.”

5. Section 4300.1 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 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 states, in pertinent part:

(a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

(c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.” . . .

8. Section 4301 states:

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:

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

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6 (j) The violation of any of the statutes of this state, of any other state, or of the
7 United States regulating controlled substances and dangerous drugs.

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9 (l) The conviction of a crime substantially related to the qualifications,
10 functions, and duties of a licensee under this chapter. The record of conviction of a
11 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
12 States Code regulating controlled substances or of a violation of the statutes of this
13 state regulating controlled substances or dangerous drugs shall be conclusive
14 evidence of unprofessional conduct. In all other cases, the record of conviction shall
15 be conclusive evidence only of the fact that the conviction occurred. The board may
16 inquire into the circumstances surrounding the commission of the crime, in order to
17 fix the degree of discipline or, in the case of a conviction not involving controlled
18 substances or dangerous drugs, to determine if the conviction is of an offense
19 substantially related to the qualifications, functions, and duties of a licensee under this
20 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
21 contendere is deemed to be a conviction within the meaning of this provision. The
22 board may take action when the time for appeal has elapsed, or the judgment of
23 conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under
25 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
26 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
27 dismissing the accusation, information, or indictment.

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

PHARMACY LAW

9. Section 4051, subdivision (a) states, in pertinent part:

Except as otherwise provided in this chapter, it is unlawful for any person to
manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous
device, . . . unless he or she is a pharmacist under this chapter. . . .

10. Section 4059 states, in pertinent part, that a person may not furnish any dangerous
drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device,

except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

11. Section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. . . .

REGULATORY PROVISIONS

12. 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

13. Section 125.3 provides 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.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

14. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime – May 4, 2021,

Possession for Sale of a Controlled Substance - Methamphetamine)

15. Respondent is subject to disciplinary action under sections 490, 4300, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially

related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

a. On or about May 4, 2021, Respondent was convicted of one felony count of violating Health and Safety Code section 11378 [possession for sale of a controlled substance, to wit methamphetamine] in the criminal proceeding entitled *The People of the State of California v. Jimena Gaytan* (Super. Ct. L.A. County, 2021, NO. VA151780). The Court sentenced Respondent to four days in jail, two years of formal probation, and completion of 200 hours of community service.

b. The circumstances of the arrest leading to the conviction are that on or about November 28, 2018, Respondent was found in possession of a large bindle of methamphetamine wrapped in clear and blue cellophane inside a gift bag in her vehicle at a Walgreens parking lot in Bellflower, California. Respondent informed officers that she picked up the methamphetamine in San Bernardino and was waiting for someone to pick it up and pay her \$2,000.00, which she was going to use to pay her winter course tuition.

SECOND CAUSE FOR DISCIPLINE

(Possession of Controlled Substances/Dangerous Drugs)

16. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that on or about November 28, 2018, Respondent violated or attempted to violate the Pharmacy Law when she was in possession of a controlled substance and dangerous drug, without a valid prescription. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 15, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Furnish Controlled Substances/Dangerous Drugs)

17. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (o), on the grounds of unprofessional conduct, for violating sections 4051, subdivision (a) and 4059, in that on or about November 28, 2018, Respondent violated or attempted to violate the Pharmacy Law when she furnished controlled substances and dangerous drugs, without valid prescriptions. Complainant refers to and by this reference incorporates the

1 allegations set forth above in paragraph 15, inclusive, as though set forth fully.

2 **FOURTH CAUSE FOR DISCIPLINE**

3 **(Violating Drug Statutes)**

4 18. Respondent is subject to disciplinary action under sections 4300 and 4301,
5 subdivision (j), on the grounds of unprofessional conduct, in that on or about November 28, 2018,
6 Respondent violated Health and Safety Code section 11378 when she was in possession for sale
7 of controlled substances. Complainant refers to and by this reference incorporates the allegations
8 set forth above in paragraph 15, inclusive, as though set forth fully.

9 **FIFTH CAUSE FOR DISCIPLINE**

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

11 19. Respondent is subject to disciplinary action under sections 4300 and 4301,
12 subdivision (f), on the grounds of unprofessional conduct, in that admittedly, on or about
13 November 28, 2018, Respondent committed acts involving moral turpitude, dishonesty, fraud,
14 deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set
15 forth above in paragraph 15, inclusive, as though set forth fully.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician License Number TCH 175846, issued
20 to Jimena G. Gaytan Flores;

21 2. Ordering Jimena G. Gaytan Flores to pay the Board the reasonable costs of the
22 investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 10/17/2021

Signature on File

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

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