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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:

13 **MICHELLE E. MICHAEL**  
14 **9830 Dale Avenue, #127**  
**San Diego, CA 91977**

15 **Pharmacy Technician License No. TCH**  
16 **34083**

17 Respondent.

Case No. 7232

18 **DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about May 5, 2022, Complainant Anne Sodergren, in her official capacity as  
21 the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed  
22 Accusation No. 7232 against Michelle E. Michael (Respondent) before the Board. (Accusation  
attached as Exhibit A.)

23 2. On or about July 31, 2000, the Board issued Pharmacy Technician License No. TCH  
24 34083 to Respondent. The Pharmacy Technician License expired on December 31, 2021, and has  
25 not been renewed.

26 3. On or about May 16, 2022, Respondent was served by Certified and First Class Mail  
27 copies of the Accusation No. 7232, Statement to Respondent, Notice of Defense, Request for  
28 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 9830 Dale Avenue, #127, San Diego, California 91977. On June 6, 2022, the Accusation packet was returned with "Not Deliverable as Addressed"- "Unable to Forward."

4. On or about June 10, 2022, Respondent was served all of the same documents outlined in the preceding paragraph at the following address which was: 9830 Dale Avenue, #137 San Diego, California 91977. On July 5, 2022, the Accusation packet was returned with "Not Deliverable as Addressed"- "Unable to Forward."

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

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

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

7. The Board takes official notice of its records and the fact that Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 7232.

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

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

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, finds that the charges and allegations in Accusation No. 7232, are separately and severally, found to be true and correct by clear and convincing evidence.

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10. The Board finds that the actual costs for Investigation and Enforcement total \$7,510.75.

### **DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent Michelle E. Michael has subjected her Pharmacy Technician License No. TCH 34083 to discipline.

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

3. The Board 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. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), in that she administered alcohol to herself in an injurious manner.

b. Respondent is subject to disciplinary action under Code section 4327 in that Respondent sold and dispensed drugs on duty while under the influence of drugs and alcohol.

### **ORDER**

IT IS SO ORDERED that Pharmacy Technician License No. TCH 34083, issued to Respondent Michelle E. Michael, 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 November 2, 2022.

It is so ORDERED on October 3, 2022.



Seung W. Oh, Pharm.D.  
Board President  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

DEFAULT DECISION ADA COMPLIANT FORMAT.DOCX  
DOJ Matter ID:SD2022800063

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 ROB BONTA  
Attorney General of California  
2 ERIN M. SUNSERI  
Supervising Deputy Attorney General  
3 AMIE J. FLYNN  
Deputy Attorney General  
4 State Bar No. 149600  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9337  
7 Facsimile: (619) 645-2061  
*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. 7232

14 **MICHELLE E. MICHAEL**  
15 **9830 Dale Avenue, #127**  
**San Diego, CA 91977**

**ACCUSATION**

16 **Pharmacy Technician License No. TCH**  
17 **34083**

Respondent.

19 **PARTIES**

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

23 2. On or about July 31, 2000, the Board issued Pharmacy Technician License No. TCH  
24 34083 to Michelle E. Michael (Respondent). The Pharmacy Technician License expired on  
25 December 31, 2021, and has not been renewed.

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**JURISDICTION**

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

4. Code section 4300 states, in pertinent part:

(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.

5. Code 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.

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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:

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

7. Section 4327 of the Code states that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

8. Section 125.3 of the Code provides, 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

9. **Chlordiazepoxide**, also known as Librium, is a drug that is used to treat anxiety and acute alcohol withdrawal symptoms. Nordiazepam is an active metabolite of diazepam and Chlordiazepoxide. Chlordiazepoxide is a Schedule IV controlled substance per Health & Safety Code section 11057(d)(5) and considered a dangerous drug per Code section 4022.

10. **Fioricet** is a combination medication comprised of acetaminophen, butalbital, and caffeine. It is used to treat tension headaches. Fioricet is a considered a dangerous drug per Code section 4022.

(MICHELLE E. MICHAEL) ACCUSATION

11. **Fiorinal** is a combination medication comprised of Aspirin, butalbital, and caffeine. Fiorinal is used to treat tension headaches. It is a Schedule III controlled substance per Health & Safety Code section 11056(c)(3) and considered a dangerous drug per Code section 4022.

#### **FACTUAL ALLEGATIONS**

12. On or about October 30, 2000, Respondent became employed as a pharmacy technician at Sharp Memorial Hospital Pharmacy (Sharp) in San Diego, California.

13. On or about June 17, 2021 at 3:00 p.m., Respondent reported to work for the evening shift. Respondent's direct supervisor, L.O., noted that Respondent was showing objective signs of intoxication, including the smell of alcohol on her breath. While under the influence of alcohol, Respondent was involved in four transactions involving medications: "inventory" of a non-controlled intravenous medication at 5:11 p.m., "vend" (removed medication/filled) of Fioricet, 2 tablets for patient J.C. at 6:04 p.m., "vend" of Fiorinal, 1 capsule for patient A.G. at 7:38 p.m., and "inventory" of a non-controlled intravenous medication at 8:07 p.m.

14. Respondent clocked in from lunch break at 7:28 p.m., and at about 8:00 p.m., L.O. contacted the Pharmacy Manager and notified the Human Resources department that Respondent smelled of alcohol. Respondent consented to a drug test and submitted urine and blood samples approximately three hours later, at 11:37 p.m. On or about July 2, 2021, Respondent's urine tests results came back, showing that her alcohol level on June 17, 2021 was approximately 0.07%. The urine test showed an alcohol level of 0.07, and the blood test showed an alcohol level of 0.05. Sharp's Employee Occupational Health Department used a back extrapolation calculation to determine that Respondent's blood alcohol level was .1775 at 3:00 p.m. Respondent's urine sample also tested positive for Nordiazepam with a result of 770 ng/mL.

15. Effective June 17, 2021, Respondent was placed on "unpaid administrative leave of absence" from Sharp. Starting July 3, 2021, Respondent was placed on Family and Medical Leave Act leave. Respondent's medical provider indicated that she was expected to be able to return to work without restrictions on September 1, 2021. However, pursuant to Sharp's "zero-tolerance" policy, the Human Resources department terminated Respondent's employment upon return.



16. Previously, between September 1, 2020 and October 20, 2020, Respondent incurred nine (9) occurrences of tardiness or no call/no show. On October 5, 2020, Respondent was scheduled to start her shift at 7:00 a.m., but did not show up and did not call until after 9:00 a.m. Respondent did not respond to texts and calls. Another employee, T., went to Respondent's home and "found her passed out surrounded by several empty alcohol containers." Following this incident, Respondent was referred to Sharp's Employee Assistance Program, and her schedule was changed from morning to evening shifts.

17. Between May 2020 and May 2021, Respondent received three prescriptions for 25 mg of Chlordiazepoxide from three different Sharp affiliated doctors, which were filled on May 23, 2020, November 19, 2020, and May 20, 2021.

**FIRST CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct)**

18. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), in that she administered alcohol to herself in an injurious manner, as fully stated in paragraphs 13-18 above.

## **SECOND CAUSE FOR DISCIPLINE**

**(Sale/Dispensing While Under the Influence of Drugs or Alcoholic Beverages)**

19. Respondent is subject to disciplinary action under Code section 4327 in that Respondent sold and dispensed drugs on duty while under the influence of drugs and alcohol, as fully stated in paragraphs 13-15 above.

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**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 No. TCH 34083 issued to Michelle E. Michael;

2. Ordering Michelle E. Michael 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: 5/5/2022

Signature on File

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

SD2022800063  
Accusation ADA Compliant Format.docx