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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. 7305

13 **EDIBALDO CASTANEDA ALMANZA**
14 **21800 Mary Street**
Perris, CA 92570

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Pharmacy Technician Registration No.**
16 **TCH 172048**

Respondent.

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18
19 **FINDINGS OF FACT**

20 1. On September 6, 2022, Complainant Anne Sodergren, in her official capacity as the
21 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
22 No. 7305 against Edibaldo Castaneda Almanza (Respondent) before the Board of Pharmacy.
23 (Accusation attached as Exhibit A.)

24 2. On June 21, 2019, the Board of Pharmacy (Board) issued Pharmacy Technician
25 Registration No. TCH 172048 to Respondent. The Pharmacy Technician Registration was in full
26 force and effect at all times relevant to the charges brought in Accusation No. 7305 and will
27 expire on February 28, 2023, unless renewed.

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1 3. On September 14, 2022, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 7305, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is: 21800 Mary Street, Perris, CA 92570.

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

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

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

16 6. The Board takes official notice of its records and the fact that Respondent failed to
17 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
18 waived his right to a hearing on the merits of Accusation No. 7305.

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

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

24 8. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
27 finds that the charges and allegations in Accusation No. 7305, are separately and severally, found
28 to be true and correct by clear and convincing evidence.

 9. The Board finds that the actual costs for Investigation and Enforcement are \$3,482.29
as of October 24, 2022.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Edibaldo Castaneda Almanza
3 has subjected his Pharmacy Technician Registration No. TCH 172048 to discipline.

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

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

8 a. March 16, 2022 Criminal Conviction for DUI with Prior on December 12, 2021, a
9 violation of Business and Professions Code sections 490 and 4301, subdivision (l); and,

10 b. Dangerous Use of Alcohol, a violation of Business and Professions Code section
11 4301, subdivision (h).

12 **ORDER**

13 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 172048, issued to
14 Respondent Edibaldo Castaneda Almanza, is revoked.

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

19 This Decision shall become effective at 5:00 p.m. on January 4, 2023.

20 It is so ORDERED on December 5, 2022.

21 

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

25 83660829.DOCX
26 DOJ Matter ID:SD2022801229

27 Attachment: Exhibit A, Accusation No. 7305
28

Exhibit A

Accusation No. 7305

(EDIBALDO CASTANEDA ALMANZA)

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

12
13 In the Matter of the Accusation Against:

Case No. 7305

14 **EDIBALDO CASTANEDA ALMANZA**
21800 Mary Street
15 Perris, CA 92570

ACCUSATION

16 **Pharmacy Technician Registration No.**
TCH 172048

17 Respondent.
18

19
20 **PARTIES**

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 June 21, 2019, the Board issued Pharmacy Technician Registration Number TCH
24 172048 to Edibaldo Castaneda Almanza (Respondent). The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 February 28, 2023, unless renewed.

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28 ///

1 **JURISDICTION**

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

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

6 5. Section 4300.1 states:

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

11 **STATUTORY PROVISIONS**

12 6. Section 482 states:

13 (a) Each board under this code shall develop criteria to evaluate the rehabilitation
14 of a person when doing either of the following:

15 (1) Considering the denial of a license by the board under Section 480.

16 (2) Considering suspension or revocation of a license under Section 490.

17 (b) Each board shall consider whether an applicant or licensee has made a
18 showing of rehabilitation if either of the following are met:

19 (1) The applicant or licensee has completed the criminal sentence at issue
20 without a violation of parole or probation.

21 (2) The board, applying its criteria for rehabilitation, finds that the applicant
22 is rehabilitated.

23 ...

24 (d) This section shall become operative on July 1, 2020.

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

28 8. Section 493 states:

(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."

...

(e) This section shall become operative on July 1, 2020.

9. 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:

...

(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.

...

(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.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (c), states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

- (1) Nature and gravity of the act(s) or offenses.
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offenses.
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

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

(a) For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation that may be performed under the license type sought or held if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board will consider the following criteria:

- (1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation that may be performed under the license type sought or held.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

...

(5) Involve a conviction for driving under the influence of drugs or alcohol.

COST RECOVERY

12. Section 125.3 provides that the administrative law judge may award the reasonable costs of investigation and enforcement to the Board, with failure to pay subjecting the license to not being renewed or reinstated. If a case settles, a stipulated settlement can include recovery of investigation and enforcement costs.

FIRST CAUSE FOR DISCIPLINE

(March 16, 2022 Criminal Conviction for DUI w/Prior on December 12, 2021)

13. Respondent has subjected his pharmacy technician registration to disciplinary action under sections 490 and 4301, subdivision (l), because he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensee. On March 16, 2022, in a criminal proceeding entitled *People v. Edibaldo Castaneda Almanza, aka Edibaldo Almanz Castaneda*, Riverside County Superior Court Case Number RIM2201988, Respondent pled guilty and was convicted of driving under the influence (DUI) of alcohol while having a blood alcohol concentration (BAC) of 0.08 percent and more (Veh. Code, § 23152, subd. (b)), a misdemeanor. In his written guilty plea, Respondent admitted an enhancement under Vehicle Code section 23540, for a prior DUI conviction within ten years of this DUI. The prior DUI conviction was on September 30, 2019, in Riverside County Superior Court case number RIM1909443. The court suspended the imposition of Respondent's sentence and granted him summary probation for five years, with standard alcohol conditions. Respondent was ordered to serve 24 days in the work release program, complete an 18-month Multiple Conviction DUI program, attend 22 Alcoholics

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1 Anonymous meetings, and pay court fines and fees. Respondent was also ordered to install an
2 ignition interlock device in any vehicle he operates for 60 days.

3 14. The circumstances that led to the March 30, 2022 conviction are that on December
4 12, 2021, a Riverside County Sheriff Deputy was dispatched to investigate a suspected
5 intoxicated driver stopped in the drive-thru of a fast food restaurant. Fire personnel opened the
6 vehicle because Respondent was non-responsive in the driver seat. The officer observed that
7 Respondent had several objective signs of intoxication, including a strong odor of alcohol, slurred
8 speech, and unsteady gait. Respondent admitted consuming alcohol. Respondent was arrested for
9 DUI, and chemical breath tests yielded results of .13 and .12% BAC.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 15. Respondent has subjected his pharmacy technician registration to disciplinary action
13 for unprofessional conduct, under section 4301, subdivision (h), because Respondent used
14 alcoholic beverages to an extent or in a manner that was dangerous and injurious to himself and
15 the public when he operated a motor vehicle while impaired by alcohol on December 12, 2021, as
16 set forth in paragraph 13.

17 **DISCIPLINARY CONSIDERATIONS**

18 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
19 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

20 a. On September 30, 2019, in a criminal proceeding entitled *People v. Edibaldo*
21 *Castaneda Almanza, aka Edibaldo Almanz Castaneda*, Riverside County Superior Court Case
22 Number RIM1909443, Respondent pled guilty and was convicted of driving a vehicle while
23 having a BAC of .08% and more (Veh. Code, § 23152, subd. (b)), a misdemeanor. The court
24 added an enhancement under Vehicle Code section 23578 for driving with a BAC of .15% or
25 more. The court sentenced Respondent to summary probation for three years, under certain terms
26 and conditions. Respondent was ordered to perform nine days in the work release program,
27 complete a three-month DUI program, and pay various court fines, fees and assessments.

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b. As a result of Respondent's September 30, 2019, conviction, the Board issued Citation Number CI 2019 84896 and a fine in the amount of \$750. Respondent did not contest the citation and paid the citation in full in resolution of the matter.

PRA YER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 172048, issued to Edibaldo Castaneda Almanza;
2. Ordering Edibaldo Castaneda Almanza to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/6/2022

Signature on File

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

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