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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

KELLY ELAINE FUNK-RIVERA
9 Corte Pacheco
San Rafael, CA 94903

**Pharmacy Technician License No. TCH
179736**

Respondent.

Case No. 7374

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 17, 2022, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 7374 against Kelly Elaine Funk-Rivera (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about December 1, 2020, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 179736 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 7374 and will expire on March 31, 2024, unless renewed.

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1 3. On or about November 18, 2022, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 7374, Statement to Respondent, Notice of Defense, Request
3 for Discovery, Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7),
4 and Notice of Assigned Hearing Date at Respondent's address of record which, pursuant to
5 Business and Professions Code section 4100, is required to be reported and maintained with the
6 Board. Respondent's address of record was and is 9 Corte Pacheco, San Rafael, CA 94903.

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

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

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

15 6. The Board takes official notice of its records and the fact that Respondent failed to
16 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
17 waived her right to a hearing on the merits of Accusation No. 7374.

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

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

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
26 finds that the charges and allegations in Accusation No. 7374, are separately and severally, found
27 to be true and correct by clear and convincing evidence.

28 9. The Board finds that the actual costs for Investigation and Enforcement are \$4,458.75
as of December 16, 2022.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Kelly Elaine Funk-Rivera has
3 subjected her Pharmacy Technician License No. TCH 179736 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 License based upon the following violations alleged in the Accusation which are supported by the
7 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

8 a. Criminal Conviction (Bus. & Prof. Code § 4000 *et seq.*). (Bus. & Prof. Code
9 §§ 490 and 4301, subd. (l), and Cal. Code Regs., title 16, § 1770, subds. (a), (b) and (c)(5);

10 b. Dangerous Use of Alcohol (Bus. & Prof. Code § 4301, subd. (h));

11 c. Knowingly Making False Representation (Bus. & Prof. Code § 4301, subd. (g).

12 **ORDER**

13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 179736, issued to
14 Respondent Kelly Elaine Funk-Rivera, 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 March 1, 2023.

20 It is so ORDERED on January 30, 2023.

21 FOR THE BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

23
24
25 By



26 Seung W. Oh, Pharm.D.
27 Board President

28 43509230.DOCX
DOJ Matter ID:SF2022401876

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Deputy Attorney General
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7 *Attorneys for Complainant*

8
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. 7374
13 KELLY ELAINE FUNK-RIVERA	ACCUSATION
14 9 Corte Pacheco	
15 San Rafael, CA 94903	
16 Pharmacy Technician License No. TCH	
17 179736	
18 Respondent.	

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.

22 2. On or about December 1, 2020, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 179736 to Kelly Elaine Funk-Rivera (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on March 31, 2024, unless renewed.

26 /////

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28 /////

JURISDICTION

1
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 118, subdivision (b) states:

5 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
6 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
7 order of a court of law, or its surrender without the written consent of the board, shall not, during
8 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
9 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
10 provided by law or to enter an order suspending or revoking the license or otherwise taking
11 disciplinary action against the licensee on any such ground.”

12 5. Section 4300 states, in part:

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

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

17 “(1) Suspending judgment.

18 “(2) Placing him or her upon probation.

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

20 “(4) Revoking his or her license.

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

23 . . .

24 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
25 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
26 shall have all the powers granted therein. The action shall be final, except that the propriety of the
27 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
28 Procedure.”

1 8. Section 4301 states, in part:

2 “The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been issued by mistake. Unprofessional conduct includes, but is not
4 limited to, any of the following:

5 . . .

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

9 “(g) Knowingly making or signing any certificate or other document that falsely represents
10 the existence or nonexistence of a state of facts.

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

16 . . .

17 “(l) The conviction of a crime substantially related to the qualifications, functions, and
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
20 substances or of a violation of the statutes of this state regulating controlled substances or
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
23 The board may inquire into the circumstances surrounding the commission of the crime, in order
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.

6”

7 9. California Code of Regulations, title 16, section 1770, states, in part:

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

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

17 “(1) The nature and gravity of the offense;

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

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

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

23 . . .

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

25 **COST RECOVERY**

26 10. Section 125.3 states, in part, that the Board may request the administrative law judge
27 to direct a licensee found to have committed a violation or violations of the licensing act to pay a
28 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FACTUAL ALLEGATIONS**

2 *In July 2021, Respondent was Arrested After Driving Under the Influence (DUI)*

3 11. On or about July 8, 2021, at approximately 6:20 a.m., California Highway Patrol
4 (CHP) responded to a report of a non-injury traffic collision in Mendocino County, California.
5 CHP found Respondent asleep in the rear seat of her vehicle.

6 12. Respondent, who appeared inebriated, recounted to CHP that she was driving her
7 vehicle the evening before (the evening of July 7, 2021) when she was involved in a traffic
8 collision, and that she had slept in her vehicle until that morning. Respondent also admitted to
9 drinking five shots of vodka the night before. She failed a field sobriety test (FST), and
10 preliminary alcohol screenings showed Respondent’s blood-alcohol content (BAC) was 0.313.
11 CHP arrested Respondent at the scene for driving under the influence of alcohol.

12 *Less than Three Months Later, Respondent is Arrested Again for DUI*

13 13. On or about September 19, 2021, at approximately 11:40 a.m., Novato Police
14 Department officers, responding to a report of a possible drunk driver, found Respondent outside
15 of a hotel room in Novato, California, with her vehicle parked in a handicap access space without
16 a handicap placard.

17 14. Respondent appeared intoxicated; and admitted that she had recently consumed four
18 shots of vodka, drove to a liquor store to obtain more alcohol, and then returning to the hotel.
19 After Respondent failed a FST, officers placed her under arrest for DUI.

20 15. Blood-alcohol analysis following her arrest showed her BAC as 0.43 (at 12:52 p.m.),
21 0.41 (at 1:02 p.m.), 0.34 (at 1:07 p.m.), and 0.40 (at 1:11 p.m.) Also following her arrest,
22 Respondent stated that she had actually consumed six shots of vodka earlier that day, apparently
23 correcting her prior statement that she had consumed four shots of vodka.

24 *Respondent’s Conviction in Marin Superior Court*

25 16. On or about May 18, 2022, in a criminal action titled *People v. Kelly Elaine Funk-*
26 *Rivera, aka Kelly Elaine Funk*, Superior Court of California, County of Marin (Case No.
27 CR217504), Respondent was convicted, by way of her plea of guilty, of Driving While Having a
28 BAC of 0.08% or Higher (Veh. Code § 23152, subd. (b).)

1 Respondent Makes a False Statement in Renewing her License

2 17. On or about May 27, 2022, Respondent renewed her Pharmacy Technician License
3 via the Board’s website. As part of that online renewal form, Respondent was required to report
4 whether she had been subject to a criminal conviction. Respondent, under penalty of perjury,
5 answered “No,” omitting to report the criminal conviction that the Marin Superior Court had
6 entered just nine (9) days before.

7
8 **FIRST CAUSE FOR DISCIPLINE**
(Criminal Conviction)

9 18. Respondent subjected her Pharmacy Technician License to discipline based on her
10 conviction of a crime substantially related to the qualifications, functions, and duties of a licensee
11 under the Pharmacy Law (Bus. & Prof. Code § 4000 *et seq.*). (Bus. & Prof. Code §§ 490 and
12 4301, subd. (1), and Cal. Code Regs., title 16, § 1770, subds. (a), (b) and (c)(5).) The
13 circumstances are set forth in paragraphs 13 through 16, above.

14 **SECOND CAUSE FOR DISCIPLINE**
15 (Dangerous Use of Alcohol)

16 19. Respondent subjected her Pharmacy Technician License to discipline based on her
17 use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to herself,
18 any other person, or the public. (Bus. & Prof. Code § 4301, subd. (h).) The circumstances are set
19 forth in paragraphs 11 through 16, above.

20 **THIRD CAUSE FOR DISCIPLINE**
21 (Knowingly Making False Representation)

22 20. Respondent subjected her Pharmacy Technician License to discipline based on her
23 knowingly making or signing a certificate or other document that falsely represents the existence
24 or nonexistence of a state of facts. (Bus. & Prof. Code § 4301, subd. (g).) The circumstances are
25 set forth in paragraphs 16 and 17, above.

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FOURTH CAUSE FOR DISCIPLINE

(Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

21. Respondent subjected her Pharmacy Technician License to discipline based on her commission of an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code § 4301, subd. (f).) The circumstances are set forth in paragraphs 16 and 17, above.

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 179736, issued to Respondent Kelly Elaine Funk-Rivera;
- 2. Ordering Respondent Kelly Elaine Funk-Rivera 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: 11/15/2022

Sodergren,
 Anne@DCA
 ANNE SODERGREN
 Executive Officer
 Board of Pharmacy
 Department of Consumer Affairs
 State of California
Complainant

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