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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 **GIOVANNY MARTINEZ-GODINEZ**
14 **1042 Saw Tooth Lane**
15 **Hemet, CA 92545**
16 **Pharmacy Technician License No. TCH**
17 **129594**
Respondent.

Case No. 7452
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

18
19 **FINDINGS OF FACT**

20 1. On or about April 4, 2023, Complainant Anne Sodergren, in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed
22 Accusation No. 7452 against Giovanni Martinez-Godinez (Respondent). (A copy of the
23 Accusation is attached as Exhibit A.)

24 2. On or about January 22, 2013, the Board of Pharmacy (Board) issued Pharmacy
25 Technician License No. TCH 129594 to Respondent. The Pharmacy Technician License was in
26 full force and effect at all times relevant to the charges brought in Accusation No. 7452 and will
27 expire on April 30, 2024, unless renewed.

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1 3. On or about March 24, 2023, Respondent's Pharmacy Technician License was
2 suspended following an ex parte hearing pursuant to an interim suspension order in Office of
3 Administrative Hearings Case No. 2023030003.

4 4. On or about April 5, 2023, Respondent was served by Certified and First Class Mail
5 copies of the Accusation No. 7452, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
7 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
8 is required to be reported and maintained with the Board. Respondent's address of record was
9 and is: 1042 Saw Tooth Lane, Hemet, CA 92545.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
12 124.

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

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

19 7. The Board takes official notice of its records and the fact that Respondent failed to
20 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
21 waived his right to a hearing on the merits of Accusation No. 7452.

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

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

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 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. 7452, are separately and severally, found
to be true and correct by clear and convincing evidence.

10. The Board finds that the actual costs for Investigation and Enforcement are \$16,439.00 as of May 4, 2023.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Giovanny Martinez-Godinez has subjected his Pharmacy Technician License No. TCH 129594 to discipline.

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

3. The Board of Pharmacy 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 has subjected his pharmacy technician registration to disciplinary action under Business and Professions Code (Code) sections 490 and 4301, subdivision (l), because he was convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensee. On November 14, 2022, in a criminal proceeding entitled *The People of the State of California v. Giovanny Martinez-Godinez*, in Riverside County Superior Court, Case Number RIM2107381, Respondent pled guilty and was convicted of driving while having a blood alcohol concentration (BAC) of 0.08 percent and more (Veh. Code, § 23152, subd. (b)), a misdemeanor, and an enhancement for driving while having a BAC in excess of 0.15 percent (Veh. Code, § 23578).

b. Respondent has further subjected his pharmacy technician registration to disciplinary action under Code section 4301, subdivision (k), for unprofessional conduct, because in addition to his November 14, 2022 DUI conviction, Respondent was convicted of a separate DUI on or about June 26, 2018. Specifically, on or about June 26, 2018, Respondent was convicted of driving with a BAC of 0.08 percent or greater, a misdemeanor. Thus, Respondent has been convicted of multiple misdemeanors involving the consumption of alcoholic beverages.

c. Respondent has further subjected his pharmacy technician registration to disciplinary action under Code section 4301, subdivision (h), for unprofessional conduct, because on January 10, 2023, Respondent used alcoholic beverages to an extent or in a manner that was dangerous

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1 and injurious to himself and the public, when he passed out drunk on the floor of a restroom while
2 on duty at Riverside University Health System Medical Center's Inpatient Pharmacy.

3 d. As a result of Respondent's June 26, 2018 DUI conviction, on July 1, 2020, the Board
4 issued Respondent Citation Number 2019-88265 and a fine in the amount of \$500. Respondent
5 did not contest the citation and paid the citation in full in resolution of the matter.

6 **ORDER**

7 IT IS SO ORDERED that Pharmacy Technician License No. TCH 129594, issued to
8 Respondent Giovanny Martinez-Godinez, is revoked.

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

13
14 This Decision shall become effective at 5:00 p.m. on July 7, 2023.

15 It is so ORDERED on June 7, 2023.

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18 _____
19 Seung W. Oh, Pharm.D.
20 Board President
21 FOR THE BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23
24
25

26 83933515_2.DOCX
27 DOJ Matter ID:SD2023800294

28 Attachment:
Exhibit A: Accusation No. 7452

Exhibit A

Accusation No. 7452

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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. 7452

14 **GIOVANNY MARTINEZ-GODINEZ**
15 **1042 Saw Tooth Lane**
Hemet, CA 92545

ACCUSATION

16 **Pharmacy Technician License No.**
17 **TCH 129594**

18 Respondent.

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 or about January 22, 2013, the Board issued Pharmacy Technician License
24 Number TCH 129594 to Giovanni Martinez-Godinez (Respondent). The Pharmacy Technician
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on April 30, 2024, unless 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 4011 states, "The board shall administer and enforce this chapter and the Uniform Controlled Substances Act."

5. Code section 4300, subdivision (a), states, "Every license issued may be suspended or revoked."

6. 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.

STATUTORY PROVISIONS

7. Code section 482 states:

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

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

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

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

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

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

...

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

8. Code section 490 provides, in pertinent part, 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.

1 9. Code section 493 states:

2 (a) Notwithstanding any other law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or
4 revoke a license or otherwise take disciplinary action against a person who holds a
5 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.

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

8 (A) The nature and gravity of the offense.

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

10 (C) The nature and duties of the profession.

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

13 (c) As used in this section, "license" includes "certificate," "permit," "authority,"
14 and "registration."

15 ...

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

17 10. Code section 4301 states:

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

20 ...

21 (h) The administering to oneself, of any controlled substance, or the use of any
22 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.

23 ...

24 (k) The conviction of more than one misdemeanor or any felony involving the
25 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
or any combination of those substances.

26 (l) The conviction of a crime substantially related to the qualifications, functions,
27 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
28 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

11. 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.

12. 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

13. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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 licentiate 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.

FIRST CAUSE FOR DISCIPLINE

(November 14, 2022 Criminal Conviction for DUI on May 4, 2021)

14. Respondent has subjected his pharmacy technician registration to disciplinary action under Code sections 490 and 4301, subdivision (I), because he was convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensee. On November 14, 2022, in a criminal proceeding entitled *The People of the State of California v. Giovanni Martinez-Godinez*, in Riverside County Superior Court, Case Number RIM2107381, Respondent pled guilty and was convicted of driving while having a blood alcohol concentration (BAC) of 0.08 percent and more (Veh. Code, § 23152, subd. (b)), a misdemeanor, and an enhancement for driving while having a BAC in excess of 0.15 percent (Veh. Code, § 23578). The Court

1 sentenced Respondent to 30 days in county jail and placed Respondent on probation for five
2 years. Respondent was ordered to complete an 18-month Multiple Offender Alcohol Program,
3 attend 22 Alcoholics' Anonymous meetings, and to pay court fines.

4 15. The circumstances that led to the November 14, 2022 conviction are that on May 4,
5 2021, at about 7:44 a.m., an officer responded to a report of a potentially intoxicated driver
6 slumped over the wheel of his vehicle, which was parked in the middle of the road. The driver
7 attempted to start the vehicle but could not find his keys. Upon arrival on the scene, the officer
8 observed Respondent standing outside of the vehicle. While speaking with Respondent, the
9 officer observed objective signs of intoxication including bloodshot/watery eyes, slurred speech,
10 and the odor of an alcoholic beverage emitting from Respondent's breath. Respondent admitted
11 to consuming a "fifth" of vodka in his hotel room prior to driving. Respondent failed a series of
12 field sobriety tests and was later arrested for DUI. During processing, Respondent was
13 administered a chemical blood test, which resulted in a blood alcohol content of 0.177 percent.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Multiple Alcohol-Related Criminal Convictions)**

16 16. Respondent has further subjected his pharmacy technician registration to disciplinary
17 action under Code section 4301, subdivision (k), for unprofessional conduct, because in addition
18 to the DUI conviction described in paragraphs 14 and 15, hereby incorporated by reference,
19 Respondent was convicted of a separate DUI on or about June 26, 2018. Specifically, on or about
20 June 26, 2018, Respondent was convicted of driving with a BAC of 0.08 percent or greater, a
21 misdemeanor. On September 23, 2017, Respondent caused a traffic collision by failing to stop at
22 a four-way stop sign and colliding into another vehicle while drunk; during this incident,
23 Respondent's blood alcohol was tested at 0.233 percent. In light of this conduct, on or about July
24 1, 2020, the Board issued Respondent Citation Number 2019-88265. Thus, Respondent has been
25 convicted of multiple misdemeanors involving the consumption of alcoholic beverages.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

3 17. Respondent has further subjected his pharmacy technician registration to disciplinary
4 action under Code section 4301, subdivision (h), for unprofessional conduct, because on January
5 10, 2023, as more fully set forth below, Respondent used alcoholic beverages to an extent or in a
6 manner that was dangerous and injurious to himself and the public, when he passed out drunk on
7 the floor of a restroom while on duty at Riverside University Health System Medical Center's
8 Inpatient Pharmacy (RUHS-MC Inpatient Pharmacy), as set forth below.

9 18. On the morning of January 10, 2023, while at work, Respondent Martinez-Godinez
10 passed out drunk on the bathroom floor of the RUHS-MC Inpatient Pharmacy. The incident
11 began when Respondent's coworkers could not locate him. After realizing the bathroom door had
12 been locked for at least twenty minutes, Respondent's colleagues attempted to locate Respondent
13 inside. Despite knocking and calling his name loudly, they heard no response. Respondent's
14 colleagues then called building services, which was eventually able to open the bathroom door.
15 Inside, Respondent was found passed out on the ground. During the code blue that followed,
16 Respondent informed the code team that he was drinking and the code team found an open bottle
17 of alcohol in Respondent's bag. Respondent later wrote and signed a declaration admitting he is a
18 severe alcoholic and describing how he consumed liquor before starting his shift, continued
19 drinking while at work, and ultimately passed out in a locked bathroom.

20 **DISCIPLINARY CONSIDERATIONS**

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

23 a. As set forth more fully in paragraph 16 above, hereby incorporated by
24 reference, on June 26, 2018, in a criminal proceeding entitled *The People of the State of*
25 *California v. Giovanni Martinez-Godinez*, Respondent was convicted of driving a vehicle while
26 having a blood alcohol content (BAC) of 0.08 percent and more (Veh. Code, § 23152, subd. (b)),
27 a misdemeanor.
28

b. As a result of Respondent's June 26, 2018, conviction, the Board issued Citation Number 2019-88265 and a fine in the amount of \$500. Respondent did not contest the citation and paid the citation in full in resolution of the matter.

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 Registration Number TCH 129594, issued to Respondent Giovanni Martinez-Godinez;
2. Ordering Respondent Giovanni Martinez-Godinez 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.