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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. 7589

13 **GILBERTO MENDOZA**
14 **AKA GILBERT BARRAGAN MENDOZA**
15 920 Harvard Avenue
16 Modesto, CA 95350

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician Registration No.**
16 **TCH 143673**

[Gov. Code, §11520]

17 Respondent.

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20 **FINDINGS OF FACT**

21 1. On or about October 17, 2023, Complainant Anne Sodergren, in her official capacity
22 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs,
23 filed Accusation No. 7589 against Gilberto Mendoza, also known as Gilbert Barragan Mendoza
24 (Respondent) before the Board. (Accusation attached as Exhibit A.)

25 2. On or about August 20, 2015, the Board issued Pharmacy Technician Registration
26 No. TCH 143673 to Respondent. The Pharmacy Technician Registration was in full force and
27 effect at all times relevant to the charges brought in Accusation No. 7589 and will expire on
28 October 31, 2024, unless renewed.

1 3. On or about October 24, 2023, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 7589, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 920 Harvard Avenue
8 Modesto, CA 95350.

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

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

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

17 6. The Board takes official notice of its records and the fact that Respondent failed to
18 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
19 waived his right to a hearing on the merits of Accusation No. 7589.

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

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
28 finds the charges and allegations in Accusation No. 7589, separately and severally, to be true and
correct by clear and convincing evidence.

 9. The Board finds that the actual costs for Investigation and Enforcement are \$5,775 as
of November 17, 2023.

1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent has subjected his Pharmacy
3 Technician Registration No. TCH 143673 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. Business and Professions Code (Code) section 4301, subdivisions (j) and (o), in that
9 on or about November 18, 2020, Respondent was in possession of methamphetamine and heroin
10 in violation of Health and Safety Code sections 11377, 11378, and 11379.

11 b. Code section 4301, subdivision (f), in that on or about July 19, 2019, Respondent
12 completed paperwork with the Department of Motor Vehicles that transferred ownership of his
13 vehicle to his brother to reduce vehicle registration fees that Respondent would have to pay to
14 bring the vehicle registration valid.

15 **ORDER**

16 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 143673, issued to
17 Respondent Gilberto Mendoza, also known as Gilbert Barragan Mendoza, is revoked.

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

22 Upon revocation per this Order, under Business and Professions Code section 4307,
23 subdivision (a), Respondent shall be prohibited from serving as a manager, administrator, owner,
24 member, officer, director, associate, partner, or serving in any other position with management or

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1 control of a licensee. This prohibition shall continue until the license is issued or reinstated.

2 This Decision shall become effective on 5:00 p.m. on February 1, 2024.

3 It is so ORDERED January 2, 2024.

4 BOARD OF PHARMACY
5 DEPARMENT OF CONSUMER AFFAIRS
6 STATE OF CALIFORNIA

7 

8 By

9 Seung W. Oh, Pharm. D.
10 Board President

11 37675315.DOCX/DOJ Matter
12 ID:SA2023303527

13 Attachment:

14 Exhibit A: Accusation
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Exhibit A

Accusation

(GILBERTO MENDOZA)

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Attorney General of California
2 KAREN R. DENVIR
Supervising 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. 7589

13 **GILBERTO MENDOZA**
14 **AKA GILBERT BARRAGAN MENDOZA**
920 Harvard Avenue
15 Modesto, CA 95350

ACCUSATION

16 **Pharmacy Technician Registration No.**
17 **TCH 143673**

Respondent.

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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 August 20, 2015, the Board issued Pharmacy Technician Registration
24 Number TCH 143673 to Gilberto Mendoza, also known as Gilbert Barragan Mendoza
25 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
26 relevant to the charges brought herein and will expire on October 31, 2024, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, Department of Consumer Affairs, 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 . . .

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.

6. Code section 4307 states, in pertinent part:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

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1 (1) Where a probationary license is issued or where an existing license is placed
2 on probation, this prohibition shall remain in effect for a period not to exceed five
3 years.

4 (2) Where the license is denied or revoked, the prohibition shall continue until
5 the license is issued or reinstated.

6 7. Code section 4011 states:

7 The board shall administer and enforce this chapter and the Uniform Controlled
8 Substances Act (Division 10 (commencing with Section 11000) of the Health and
9 Safety Code).

10 **STATUTORY AND REGULATORY PROVISIONS**

11 8. Code section 4301 states, in pertinent part:

12 The board shall take action against any holder of a license who is guilty of
13 unprofessional conduct. Unprofessional conduct shall include, but is not limited to,
14 any of the following:

15 ...

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

19 ...

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

22 ...

23 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
24 abetting the violation of or conspiring to violate any provision or term of this chapter
25 or of the applicable federal and state laws and regulations governing pharmacy,
26 including regulations established by the board or by any other state or federal
27 regulatory agency.

28 9. Code section 4060 states, in pertinent part:

A person shall not possess any controlled substance, except that furnished to a
person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, nurse practitioner practicing pursuant to Section 2837.103 or 2837.104,
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 practicing pursuant to Section 2836.1, a physician assistant pursuant to
Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

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10. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:

Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

11. Health and Safety Code section 11378 states:

Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled substance that meets any of the following criteria shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code:

(1) The substance is classified in Schedule III, IV, or V and is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056.

(2) The substance is specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d).

(3) The substance is specified in paragraph (11) of subdivision (c) of Section 11056.

(4) The substance is specified in paragraph (2) or (3) of subdivision (f) of Section 11054.

(5) The substance is specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055.

12. Health and Safety Code section 11379 states:

(a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or

1 specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055,
2 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian,
3 licensed to practice in this state, shall be punished by imprisonment pursuant to
subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four
years.

4 (b) Notwithstanding the penalty provisions of subdivision (a), any person who
5 transports any controlled substances specified in subdivision (a) within this state from
6 one county to another noncontiguous county shall be punished by imprisonment
pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine
years.

7 (c) For purposes of this section, “transports” means to transport for sale.

8 (d) Nothing in this section is intended to preclude or limit prosecution under an
9 aiding and abetting theory, accessory theory, or a conspiracy theory.

10 **COST RECOVERY**

11 13. Code section 125.3 provides, in pertinent part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
16 included in a stipulated settlement.

17 **CONTROLLED SUBSTANCES**

18 14. *Heroin* is a Schedule I controlled substance pursuant to Health and Safety Code
19 section 11054, subdivision (c).

20 15. *Methamphetamine* is a Schedule II controlled substance as designated by Health and
21 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Code section
22 4022.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Violation of State Laws Regulating Controlled Substances)**

25 16. On or about November 18, 2020, Respondent was detained by a deputy with the San
26 Diego Sheriff’s Office for a traffic stop. A K9 unit detected controlled substances in
27 Respondent’s vehicle. The deputy found that the battery in Respondent’s vehicle had been cut in
28 half. The battery concealed two packages weighing .9 kg. each of methamphetamine and one

1 package weighing approximately 1 kg. of heroin. The deputy also found a scale with
2 methamphetamine residue in Respondent's vehicle. The deputy assessed that Respondent was in
3 possession of 36,640 doses of methamphetamine (a quantity that would last approximately 16-1/2
4 years if used by a heavy drug user six times a day) and 21,200 doses of heroin (a quantity that
5 would last approximately 9-1/2 years if used by a heavy drug user). The deputy concluded that
6 Respondent intended to sell the nearly three kilograms of controlled substances due to the
7 quantity found.

8 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
9 subdivisions (j) and (o), on the grounds of unprofessional conduct, in that Respondent violated
10 statutes regulating controlled substances and/or dangerous drugs, and violated laws governing
11 pharmacy. Specifically, on or about November 18, 2020, Respondent unlawfully possessed
12 methamphetamine and heroin, controlled substances and/or dangerous drugs, as set forth in
13 paragraph 15 above, in violation of Health & Safety Code sections 11377 (unlawful possession of
14 controlled substances), 11378 (unlawful possession of controlled substances with intent to sell),
15 11379 (transport, sale, or distribution of controlled substances), and Code section 4060.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Act Involving Dishonesty)**

18 18. Respondent is subject to disciplinary action pursuant to Code section 4301,
19 subdivision (f), on the grounds of unprofessional conduct, in that he committed a dishonest act.
20 Specifically, on or about July 19, 2019, an officer with the California Highway Patrol (CHP)
21 impounded a 2017 Honda Civic that Respondent was driving because the vehicle had an expired
22 registration and a cracked windshield. On or about July 22, 2019, "P.O.", Respondent's cousin,
23 attempted to retrieve the impounded vehicle. P.O. presented incomplete registration
24 documentation at the CHP office and falsely stated that he was "J.M.", the registered owner of the
25 vehicle. P.O. presented J.M.'s driver license, claiming that he was J.M. CHP officers were
26 unable to confirm that P.O. was, in fact, J.M. due to physical differences between P.O. and the
27 photograph on J.M.'s driver license. P.O. admitted to CHP officers that J.M. was his brother.
28 Respondent was waiting in the parking lot at the CHP office while P.O. was attempting to retrieve

1 the vehicle. When approached by a CHP officer, Respondent stated that he (Respondent) was in
2 fact the real owner of the Honda and that to reduce the registration fees, he completed paperwork
3 with the Department of Motor Vehicles that transferred the vehicle's ownership to his brother,
4 J.M., so the registration fees would be \$395 instead of the \$1000 registration fees that Respondent
5 would have to pay to bring the registration valid. The vehicle was released to J.M., the registered
6 owner.

7 **OTHER MATTERS**

8 19. Pursuant to Code section 4307, if discipline is imposed on Gilberto Mendoza, also
9 known as Gilbert Barragan Mendoza, then Gilberto Mendoza, also known as Gilbert Barragan
10 Mendoza, shall be prohibited from serving as a manager, administrator, owner, member, officer,
11 director, associate, or partner of a licensee for 1) a period not to exceed five (5) years if the
12 pharmacy technician registration is placed on probation; or, 2) if the pharmacy technician
13 registration is revoked, the prohibition shall continue until the pharmacy technician registration is
14 reinstated.

15 **PRAYER**

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

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 143673,
19 issued to Gilberto Mendoza, also known as Gilbert Barragan Mendoza;

20 2. Prohibiting Gilberto Mendoza, also known as Gilbert Barragan Mendoza from
21 serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any
22 other position with management or control of any pharmacy licensee;

23 3. Ordering Gilberto Mendoza to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and,

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

DATED: 10/17/2023

Sodergren,
Anne@DCA

Digitally signed by Sodergren,
Anne@DCA
Date: 2023.10.17 15:03:45 -07'00'

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

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