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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. 7595

13 **KEVIN SHANE FAILLA**  
14 **843 South Danbrook Drive**  
15 **Anaheim, CA 92804**

**DEFAULT DECISION AND ORDER**

16 **Pharmacy Technician License No. TCH**  
17 **63290**

[Gov. Code, §11520]

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about October 31, 2023, Complainant Anne Sodergren, in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
21 Accusation No. 7595 against Kevin Shane Failla (Respondent) before the Board of Pharmacy.  
(Accusation attached as Exhibit A.)

22 2. On or about June 14, 2005, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician License No. TCH 63290 to Respondent. The Pharmacy Technician License was in  
24 full force and effect at all times relevant to the charges brought in Accusation No. 7595 and will  
25 expire on May 31, 2025, unless renewed.

26 3. On or about November 6, 2023, Respondent was served by Certified and First Class  
27 Mail copies of the Accusation No. 7595, Statement to Respondent, Notice of Defense, Request  
28 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
2 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
3 record was and is 843 South Danbrook Drive, Anaheim, CA 92804.

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

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

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

12 6. The Board takes official notice of its records and the fact that Respondent failed to  
13 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore  
14 waived his right to a hearing on the merits of Accusation No. 7595.

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

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

20 8. Pursuant to its authority under Government Code section 11520, the Board finds  
21 Respondent is in default. The Board will take action without further hearing and, based on the  
22 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
23 finds that the charges and allegations in Accusation No. 7595, are separately and severally, found  
24 to be true and correct by clear and convincing evidence.

25 9. The Board finds that the actual costs for Investigation and Enforcement are \$2,542.50  
26 as of December 5, 2023.

### 27 **DETERMINATION OF ISSUES**

28 1. Based on the foregoing findings of fact, Respondent Kevin Shane Failla has subjected  
his Pharmacy Technician License No. TCH 63290 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 License to disciplinary action under code section 4301, subdivision (l), and title 16, section 1770, of the California Code of Regulations, for conviction of a substantially related crime, and under section 4301, subdivision (h), for dangerous use of alcohol. The circumstances of the violations are that on October 12, 2021, Respondent was convicted of violating Vehicle Code section 23152, subdivisions (a) and (b), for driving under the influence of alcohol, and with a blood alcohol concentration of .08% or higher, with a special allegation under Vehicle Code section 23538(b)(2), for having a blood alcohol concentration of .20% or higher. The conviction followed Respondent's act of driving under the influence of alcohol on December 17, 2020 in the city of Fullerton.

**ORDER**

IT IS SO ORDERED that Pharmacy Technician License No. TCH 63290, issued to Respondent Kevin Shane Failla, is revoked.

IT IS FURTHER ORDER THAT Respondent Kevin Shane Fallia shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of any entity licensed by the Board until Pharmacy Technician License No. TCH 63290 is reinstated.

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 February 21, 2024.

It is so ORDERED on January 22, 2024.



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

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Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(KEVIN SHANE FAILLA)

1 ROB BONTA  
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2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 MICHAEL M. KARIMI  
Deputy Attorney General  
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*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 7595

13 **KEVIN SHANE FAILLA**  
14 **843 South Danbrook Drive**  
**Anaheim, CA 92804**

**ACCUSATION**

15 **Pharmacy Technician License No. TCH**  
16 **63290**

17 Respondent.

18 **PARTIES**

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

21 2. On or about June 14, 2005, the Board issued Pharmacy Technician License Number  
22 TCH 63290 to Kevin Shane Failla (Respondent). The Pharmacy Technician License was in full  
23 force and effect at all times relevant to the charges brought herein and will expire on May 31,  
24 2025, unless renewed.

25 **JURISDICTION**

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

1           4.     Section 4300 states:

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

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

5                           (1) Suspending judgment.

6                           (2) Placing him or her upon probation.

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

8                           (4) Revoking his or her license.

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

11                   (c) The board may refuse a license to any applicant guilty of unprofessional  
conduct. The board may, in its sole discretion, issue a probationary license to any  
12 applicant for a license who is guilty of unprofessional conduct and who has met all  
other requirements for licensure. The board may issue the license subject to any  
13 terms or conditions not contrary to public policy, including, but not limited to, the  
following:

14                           (1) Medical or psychiatric evaluation.

15                           (2) Continuing medical or psychiatric treatment.

16                           (3) Restriction of type or circumstances of practice.

17                           (4) Continuing participation in a board-approved rehabilitation program.

18                           (5) Abstention from the use of alcohol or drugs.

19                           (6) Random fluid testing for alcohol or drugs.

20                           (7) Compliance with laws and regulations governing the practice of pharmacy.

21                   (d) The board may initiate disciplinary proceedings to revoke or suspend any  
probationary certificate of licensure for any violation of the terms and conditions of  
22 probation. Upon satisfactory completion of probation, the board shall convert the  
probationary certificate to a regular certificate, free of conditions.

23                   (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  
24 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  
25 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.  
26

27           5.     Section 4300.1 states:

28                   The expiration, cancellation, forfeiture, or suspension of a board-issued license

1 by operation of law or by order or decision of the board or a court of law, the  
2 placement of a license on a retired status, or the voluntary surrender of a license by a  
3 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
4 investigation of, or action or disciplinary proceeding against, the licensee or to render  
5 a decision suspending or revoking the license.

#### 6 **STATUTORY PROVISIONS**

7 6. Section 490 provides, in pertinent part, that a board may suspend or revoke a license  
8 on the ground that the licensee has been convicted of a crime substantially related to the  
9 qualifications, functions, or duties of the business or profession for which the license was issued.

10 7. Section 4301 states, in pertinent part:

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

14 . . .

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

20 . . .

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

24 (l) The conviction of a crime substantially related to the qualifications,  
25 functions, and duties of a licensee under this chapter. The record of conviction of a  
26 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
27 States Code regulating controlled substances or of a violation of the statutes of this  
28 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.

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1       conspire to violate, any provision of Chapter 13 (commencing with Section 801 ) of  
2       Title 21 of the United States Code regulating controlled substances or any law of this  
3       state, or any other jurisdiction, relating to controlled substances or dangerous drugs.

4       (3) Violate or attempt to violate, directly or indirectly, or to aid, abet or  
5       conspire to violate, any provision of law of this state, or any other jurisdiction,  
6       relating to government provided or government supported healthcare.

7       (4) Involve dishonesty, fraud, deceit, or corruption related to money, items,  
8       documents, or personal information.

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

#### 10       **COST RECOVERY**

11       10.   Section 125.3 states, in pertinent part, that the Board may request the administrative  
12       law judge to direct a licentiate found to have committed a violation or violations of the licensing  
13       act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
14       case.

#### 15       **FACTUAL ALLEGATIONS**

16       11.   On October 12, 2021, in a criminal matter entitled, *The People of the State of*  
17       *California v. Kevin Shane Failla*, case number 21NM00848, Respondent was convicted of one  
18       misdemeanor count of violating Vehicle Code section 23152 subdivision (a) [driving under the  
19       influence] and one misdemeanor count of violating Vehicle Code section 23152 subdivision (b)  
20       [driving with a blood alcohol concentration of .08% or higher]. Respondent also admitted a  
21       special allegation under Vehicle Code section 23538 subdivision (b)(2) [blood alcohol  
22       concentration of .20% or higher]. Sentencing on the conviction under Vehicle Code section  
23       23152 subdivision (b) was stayed pursuant to Penal Code section 654. The court placed  
24       Respondent on three years' summary probation. In addition, Respondent was ordered to enroll  
25       and complete a nine-month first offender driving under the influence program, attend and  
26       complete a victim impact counseling, and pay fines, fees, and restitution.

27       12.   The facts that led to the conviction are as follows: on or about 9:43 p.m. on December  
28       17, 2020, officers with the Fullerton Police Department observed Respondent drifting in and out  
29       of his lane while driving. When Respondent was contacted after he had pulled into a parking lot,  
30       he displayed objective signs of alcohol intoxication. Respondent subsequently performed field  
31       sobriety tests in a manner consistent with a person under the influence, and he was placed under

1 arrest. A breath test administered at 10:39 p.m. and 10:42 p.m. returned a blood alcohol content  
2 (BAC) of 0.204% and 0.206%.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of a Substantially Related Crime)**

5 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
6 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
7 Respondent was convicted of a crime substantially related to the qualifications, functions or  
8 duties of a pharmacy technician in that he was convicted of violating Vehicle Code section 23152  
9 subdivision (a) [driving under the influence], a misdemeanor. Complainant refers to, and by this  
10 reference incorporates, the allegations set forth above in paragraphs 10 and 11, as though fully set  
11 forth herein.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), on  
15 the grounds of unprofessional conduct, in that on or about December 17, 2020, Respondent used  
16 alcoholic beverages to an extent or in a manner dangerous or injurious to himself, any person, or  
17 the public. Complainant refers to, and by this reference incorporates, the allegations set forth  
18 above in paragraphs 10 and 11, as though fully set forth herein.

19 **OTHER MATTERS**

20 15. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician  
21 License Number TCH 63290 issued to Kevin Shane Failla, then he shall be prohibited from  
22 serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any  
23 position with management or control of a license for five years if Pharmacy Technician License  
24 Number TCH 63290 is placed on probation or until Pharmacy Technician License Number TCH  
25 63290 is reinstated if it is revoked without being placed on probation.

26 ///

27 ///

28 ///

**PRAYER**

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 License Number TCH 63290, issued to Kevin Shane Failla;

2. Prohibiting Kevin Shane Failla from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any position with management or control of a license for five years if Pharmacy Technician License Number TCH 63290 is placed on probation, or until Pharmacy Technician License Number TCH 63290 is reinstated if it is revoked.

3. Ordering Kevin Shane Failla to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 10/31/2023

Sodergren, Anne@DCA  
Digitally signed by Sodergren, Anne@DCA  
Date: 2023.10.31 20:32:52 -07'00'

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

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