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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. 7614

13 **ANTHONY BUSTAMANTE**
14 11944 Bermuda Avenue
Visalia, CA 93291

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician License No. TCH**
16 **177826**

[Gov. Code, §11520]

17 Respondent.
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19
20 **FINDINGS OF FACT**

21 1. On or about September 25, 2023, Complainant Anne Sodergren, in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
23 filed Accusation No. 7614 against Anthony Bustamante (Respondent) before the Board of
24 Pharmacy. (Accusation attached as Exhibit A.)

25 2. On or about September 15, 2020, the Board of Pharmacy (Board) issued Pharmacy
26 Technician License No. TCH 177826 to Respondent. The Pharmacy Technician License expired
27 on June 30, 2022, and has not been renewed.
28

1 3. On or about October 2, 2023, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 7614, 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: 11944 Bermuda Avenue, Visalia, CA 93291.

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 him of the Accusation, and therefore
17 waived his right to a hearing on the merits of Accusation No. 7614.

18 7. 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
20 the hearing, the agency may take action based upon the respondent's express
21 admissions or upon other evidence and affidavits may be used as evidence without
22 any notice to 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. 7614, 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 \$2,408.75
as of November 12, 2023.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Anthony Bustamante has
3 subjected his Pharmacy Technician License No. TCH 177826 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. Business and Professions Code sections 490 and 4301, subdivision (I) – Conviction of
9 Substantially Related Crime; and

10 b. Business and Professions Code section 4301, subdivision (h) – Use of Alcoholic
11 Beverages in Manner Dangerous to Public.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 177826, issued to Respondent Anthony Bustamante, is revoked.

IT IS FURTHER ORDERED that Respondent Anthony Bustamante is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee until Respondent's Pharmacy Technician License No. TCH 177826 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

95530404.DOCX
DOJ Matter ID:FR2023304069

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 ROB BONTA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 STEVE J. PYUN
Deputy Attorney General
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Attorneys for Complainant
7

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. 7614

13 **ANTHONY BUSTAMANTE**
11944 Bermuda Avenue
14 Visalia, CA 93291

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 177826**

Respondent.

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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 September 15, 2020, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 177826 to Anthony Bustamante (Respondent). The Pharmacy
24 Technician Registration expired on June 30, 2022, and was cancelled October 2, 2022.

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 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Code sections 4000 *et seq.*] and the Uniform Controlled Substances Act
3 [Health & Safety Code sections 11000 *et seq.*].

4 5. Section 4300 of the Code states, in pertinent part, that “[e]very license issued may be
5 suspended or revoked.”

6 6. Section 4300.1 of the Code states:

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

13 **STATUTORY PROVISIONS**

14 7. Section 490 of the Code states:

15 (a) In addition to any other action that a board is permitted to take against a
16 licensee, a board may suspend or revoke a license on the ground that the licensee has
17 been convicted of a crime, if the crime is substantially related to the qualifications,
18 functions, or duties of the business or profession for which the license was issued.

19 (b) Notwithstanding any other provision of law, a board may exercise any
20 authority to discipline a licensee for conviction of a crime that is independent of the
21 authority granted under subdivision (a) only if the crime is substantially related to the
22 qualifications, functions, or duties of the business or profession for which the
23 licensee’s license was issued.

24 (c) A conviction within the meaning of this section means a plea or verdict of
25 guilty or a conviction following a plea of nolo contendere. An action that a board is
26 permitted to take following the establishment of a conviction may be taken when the
27 time for appeal has elapsed, or the judgment of conviction has been affirmed on
28 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.

 (d) The Legislature hereby finds and declares that the application of this section
has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
(2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
number of statutes and regulations in question, resulting in potential harm to the
consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

1 8. Section 4301 of the Code states, in relevant part:

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

5 ...

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

11 ...

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

9. Code section 4307, subdivision (a), states:

 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, or partner of any partnership, corporation, 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 manger, administrator, owner,
member, officer, director, associate, or partner had knowledge 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 manger, administrator,
owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

3 **REGULATORY PROVISIONS**

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

5 For the purpose of denial, suspension, or revocation of a personal or facility
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
7 Professions Code, a crime or act shall be considered substantially related to the
8 qualifications, functions or duties of a licensee or registrant if to a substantial degree
9 it evidences present or potential unfitness of a licensee or registrant to perform the
10 functions authorized by his license or registration in a manner consistent with the
11 public health, safety, or welfare.

12 **COST RECOVERY**

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

17 **FACTUAL ALLEGATIONS**

18 12. On or about April 22, 2022, after pleading nolo contendere, Respondent was
19 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
20 [driving under the influence of alcohol] with an enhancement under Vehicle Code section 23578
21 [blood alcohol content (BAC) greater than 0.15%] in the criminal proceeding entitled *The People*
22 *of the State of California v. Anthony Bustamante* (Super. Ct. Tulare County, 2013, No. VCM
23 423012). The court ordered Respondent to serve five days in jail, and placed Respondent on
24 probation for five years. The court also ordered Respondent to pay a fine of \$1,885.00, complete
25 a three-month DUI program, and attend weekly Alcoholics/Narcotics Anonymous meetings.

26 13. The circumstances underlying the conviction are that on or about June 11, 2021, at
27 approximately 11:06 p.m., a California Highway Patrol (CHP) officer observed a vehicle weaving
28 while tailgating another vehicle in Tulare County. The officer pulled the vehicle over and
engaged the driver, identified as Respondent. The officer observed objective signs of alcohol
intoxication in Respondent, including red and watery eyes, slurred speech, and the odor of

1 alcohol. The officer also observed an open beer can inside Respondent's vehicle. Respondent
2 failed a series of field sobriety tests and refused to submit to a preliminary alcohol screening test.
3 Respondent was arrested at approximately 11:22 p.m. Respondent submitted to a chemical breath
4 test at 11:44 p.m., which revealed a BAC of 0.23%, and a second chemical breath test at 11:47
5 p.m., which revealed a BAC of 0.22%. Respondent requested a chemical blood test, and had his
6 blood drawn at 11:53 p.m. The blood test revealed a BAC of 0.23%.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of Substantially Related Crimes)**

9 14. Respondent is subject to disciplinary action under Code sections 4301, subdivision
10 (I), and 490, in that Respondent was convicted of a crime substantially related to the
11 qualifications, functions, or duties of a licensed Pharmacy Technician. Complainant refers to, and
12 by this reference incorporates, the allegations set forth above in paragraphs 10 through 11 as
13 though set forth fully herein.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Use of Alcoholic Beverages in Manner Dangerous to Public)**

16 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
17 in that Respondent used alcoholic beverages in a manner as to be dangerous or injurious to the
18 public. Complainant refers to, and by this reference incorporates, the allegations set forth above
19 in paragraphs 10 through 11 as though set forth fully herein.

20 **OTHER MATTERS**

21 16. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician
22 Registration Number TCH 177826 issued to Anthony Bustamante, Anthony Bustamante shall be
23 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
24 or partner of a licensee for five years if Pharmacy Technician Registration Number TCH 177826
25 is placed on probation, or until Pharmacy Technician Registration Number TCH 177826 is
26 reinstated if it is revoked.

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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 177826, issued to Anthony Bustamante;

2. Prohibiting Anthony Bustamante from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist Technician Registration Number TCH 177826 is placed on probation, or until it is reinstated if it is revoked;

3. Ordering Anthony Bustamante 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,

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

DATED: September 25, 2023

Sodergren,
Anne@DCA

Digitally signed by
Sodergren, Anne@DCA
Date: 2023.09.25 13:45:22
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ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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