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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. 7644

13 **EDGAR ANTONIO HERNANDEZ**
14 **2054 Dayflower Court**
Perris, CA 92571

DEFAULT DECISION AND ORDER

15 **Pharmacy Technician Registration No. TCH**
16 **149269**

[Gov. Code, §11520]

17 Respondent.

18 **FINDINGS OF FACT**

19 1. On or about December 12, 2023, Complainant Anne Sodergren, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 7644 against Edgar Antonio Hernandez (Respondent) before the Board of
22 Pharmacy. (Accusation attached as Exhibit A.)

23 2. On or about August 20, 2015, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 149269 to Respondent. The Pharmacy Technician Registration
25 expired on November 30, 2022, and has not been renewed.

26 3. On or about December 22, 2023, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 7644, 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 2054 Dayflower Court, Perris, CA 92571.

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. 7644.

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. 7644, 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 \$1,418.75 as of
26 January 16, 2024.

27 **DETERMINATION OF ISSUES**

28 1. Based on the foregoing findings of fact, Respondent Edgar Antonio Hernandez has
subjected his Pharmacy Technician Registration No. TCH 149269 to discipline.

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

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3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration 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 Code sections 490 and 4301, subdivision (l), for conviction of a substantially related crime, and under 4301, subdivision (h), for dangerous use of alcohol, in that on July 14, 2022, in the criminal proceeding titled *People of the State of California v. Edgar Antonio Hernandez*, San Diego County Superior Court Case Number M282024, Respondent was convicted of driving while having a blood alcohol concentration of .08 percent or more, a misdemeanor violation of section 23152, subdivision (b) of the Vehicle Code, with the admission of a prior conviction for driving under the influence of alcohol; and of driving while having a suspended license for a prior conviction of driving under the influence of alcohol, a misdemeanor under section 14601.2, subdivision (a), of the Vehicle Code.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 149269, issued to Respondent Edgar Antonio Hernandez, is revoked.

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 April 3, 2024.

It is so ORDERED on March 4, 2024.

Young W. On

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

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SD2023802702

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

13 In the Matter of the Accusation Against:

Case No. 7644

14 **EDGAR ANTONIO HERNANDEZ**
15 **2054 Dayflower Court**
16 **Perris, CA 92571**

ACCUSATION

17 **Pharmacy Technician Registration No. TCH**
18 **149269**

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 , Department of Consumer Affairs.

23 2. On or about August 20, 2015, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 149269 to Edgar Antonio Hernandez (Respondent). The Pharmacy
25 Technician Registration expired on November 30, 2022, and has not been renewed.

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28 ///

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (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 4300, subdivision (a), states, "Every license issued may be suspended or revoked."

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.

STATUTORY PROVISIONS

6. 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.

...

7. 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.

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1 8. 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
6 substantially related to the qualifications, functions, and duties of the licensee in
7 question, the record of conviction of the crime shall be conclusive evidence of the fact
8 that the conviction occurred, but only of that fact.

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

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

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

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

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

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

19 ...

20 9. Code section 4301 states:

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

24 ...

25 (h) The administering to oneself, of any controlled substance, or the use of any
26 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
27 or injurious to oneself, to a person holding a license under this chapter, or to any other
28 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.

 ...

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

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

10. 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.

11. 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 (1) The nature and gravity of the offense;
- 2 (2) The number of years elapsed since the date of the offense; and
- 3 (3) The nature and duties of the practice, profession, or occupation that
may be performed under the license type sought or held.

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

6 ...

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

9 **COST RECOVERY**

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

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(July 14, 2022 Criminal Conviction for DUI on June 1, 2022)**

17 13. Respondent has subjected his pharmacy technician registration to disciplinary action
18 under Code sections 490 and 4301, subdivision (l), because he was convicted of a crime that is
19 substantially related to the qualifications, functions, and duties of a registered pharmacy
20 technician. On or about July 14, 2022, in a criminal proceeding entitled *People of the State of*
21 *California v. Edgar Antonio Hernandez*, in San Diego County Superior Court, case number
22 M282024, Respondent was convicted on his plea of guilty of driving under the influence (DUI) of
23 alcohol while having a blood alcohol concentration (BAC) of 0.08 percent or more (Veh. Code
24 section 23152, subd. (b)), a misdemeanor. Respondent also plead guilty to driving while having a
25 suspended license for a prior conviction of driving under the influence of alcohol, and admitted
26 the truth of that prior conviction from September 18, 2020 in Riverside County Superior Court
27 case number RIM2005864. As a result of the conviction in San Diego County, Respondent was
28 sentenced to 10 days jail and placed on probation for five years with standard alcohol conditions.

14. The circumstances that led to the conviction are that, at approximately 11:55 p.m on June 1, 2022., Respondent was found by an officer with the California Highway Patrol stopped alongside I-15 in San Diego County. As the officer parked behind Respondent's car, he saw Respondent get out from the driver's seat of the stopped car. Upon contact with the officer, Respondent initially denied that he had been driving. When the officer told Respondent that he had just saw him get out of the driver's seat, Respondent admitted that he had been driving. Respondent displayed signs of alcohol intoxication including slurred speech. At approximately 12:07 a.m. and 12:09 a.m., Respondent submitted to a preliminary alcohol screen at the scene, and his BAC returned as .176% and .192%. A subsequent blood sample retrieved from Respondent at approximately 12:57 a.m. on June 2, 2022, after he was placed under arrest, was later found to contain a BAC of .216%.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

15. Respondent has subjected his pharmacy technician registration to disciplinary action under Code section 4301, subdivision (h), for unprofessional conduct because on June 1, 2022, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and injurious to himself and the public when he operated a motor vehicle while impaired by alcohol, as described above in paragraphs 13 and 14, and incorporated here by this reference.

DISCIPLINE CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about October 26, 2020, in a prior action, the Board of Pharmacy issued Citation Number CI 2019 87600 for violations under Code section 4301, subdivisions (l) and (h), and ordered Respondent to pay a fine in the amount of \$850 in connection with the act of driving under the influence of alcohol on March 7, 2020, and suffering a related conviction in Riverside County Superior Court case number RIM2005864 which included a special allegation under Vehicle Code section 23578 for having a BAC of .15% or higher. That Citation is now final.

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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 149269, issued to Edgar Antonio Hernandez;

2. Ordering Edgar Antonio Hernandez 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: 12/12/2023

Sodergren,
Anne@DCA

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

Digitally signed by Sodergren,
Anne@DCA
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