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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 7650

**TERRY BURKES
3201 Pope Avenue
Sacramento, CA 95821**

DEFAULT DECISION AND ORDER

Pharmacist License No. RPH 70570¹

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about October 31, 2023, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 7650 against Terry Burkes (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 19, 1980, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 35553 to Respondent. The Pharmacist License expired on April 30, 2020, and has not been renewed.

¹ Due to a scrivener’s error, the Accusation filed in this matter incorrectly stated that Respondent’s pharmacist license number was RPH 70570, when Respondent’s actual pharmacist license number is RPH 35553. Respondent’s license number is hereby corrected to reflect that his pharmacist license number is 35553.

1 3. On or about November 2, 2023, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 7650, 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: 3201 Pope Avenue, Sacramento, CA 95821.

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. 7650.

18 7. California 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. 7650, 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 February 1, 2024.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Terry Burkes has subjected his
3 Pharmacist License No. RPH 35553 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 Pharmacist License
6 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. Respondent is subject to disciplinary action under Code section 4301, subdivision (l)
9 – criminal conviction.

10
11 **ORDER**

12 IT IS SO ORDERED that Pharmacist License No. RPH 35553, issued to Respondent Terry
13 Burkes, is revoked.

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

18 This Decision shall become effective at 5:00 p.m. on April 3, 2024.

19 It is so ORDERED on March 4, 2024.

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

23 DOJ Matter ID:SA2023304939

24 Attachment:
25 Exhibit A: Accusation

Exhibit A

Accusation

(TERRY BURKES)

1 ROB BONTA
Attorney General of California
2 KAREN R. DENVIR
Supervising Deputy Attorney General
3 KATELYN E. DOCHERTY
Deputy Attorney General
4 State Bar No. 322028
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6277
Facsimile: (916) 327-8643
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. 7650

13 **TERRY BURKES**
14 **3201 Pope Avenue**
Sacramento, CA 95821

ACCUSATION

15 **Pharmacist License No. RPH 70570**

16 Respondent.
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21 **PARTIES**

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

25 2. On or about August 19, 1980, the Board of Pharmacy issued Pharmacist License
26 Number RPH 70570 to Terry Burkes (Respondent). The Pharmacist License expired on April 30,
27 2020, and has not been renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Code section 4011 provides that the Board shall administer and enforce both the
6 Pharmacy Law [Bus. & Prof. Code §§ 4000, *et seq.*] and the Uniform Controlled Substances Act
7 [Health & Safety Code §§ 11000, *et seq.*].

8 5. Code section 4300 states, in pertinent part:

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

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

12 (1) Suspending judgment.

13 (2) Placing him or her upon probation.

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

15 (4) Revoking his or her license.

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

18 (e) The proceedings under this article shall be conducted in accordance with
19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
20 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
superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

21 6. Code section 4300.1, states:

22 The expiration, cancellation, forfeiture, or suspension of a board-issued license
23 by operation of law or by order or decision of the board or a court of law, the
24 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
25 investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

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1 **STATUTORY PROVISIONS**

2 7. Section 4301 of the Code states, in pertinent part:

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

5 ...

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

8 ...

9 (l) The conviction of a crime substantially related to the qualifications,
10 functions, and duties of a licensee under this chapter. The record of conviction of a
11 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
12 state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction shall
13 be conclusive evidence only of the fact that the conviction occurred. The board may
14 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
15 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
16 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
17 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
18 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
19 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
20 dismissing the accusation, information, or indictment.

21 **COST RECOVERY**

22 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 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 licensee to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

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1 CAUSE FOR DISCIPLINE

2 (Conviction of a Substantially Related Crime)

3 9. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
4 in that he was convicted of a crime that is substantially related to the functions, qualifications and
5 duties of a pharmacy technician. The circumstances are as follows:

6 10. On or about June 15, 2022, in the criminal matter titled *People v. Terry Jurich Burks*,
7 Alameda County Superior Court Case Number 22-CR-001260, Respondent was convicted on his
8 plea of nolo contendere to a misdemeanor violation of Penal Code section 242 (battery). The
9 court placed Respondent on probation for a period of one year, and ordered him to pay various
10 fines and fees. The underlying circumstances were as follows:

11 11. On or about November 24, 2021, officers with the Pleasanton Police Department
12 responded to call at a mobile home complex in Pleasanton, California, regarding an assault. When
13 the officer responded, the victim told him that his brother, later identified as Respondent, had
14 knocked him out of a chair, kicked him, held a knife to his throat and threatened to kill him. The
15 officer noticed that the victim had an injury to his face that looked like it was caused by the blade
16 of a knife. Respondent told the officer that he did push the victim out of his chair, kicked the
17 victim's legs out of the way, and while the victim was on the ground Respondent told the victim "I
18 should knock your ass out now."

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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 Pharmacist License Number RPH 70570, issued to Terry Burkes;

2. Ordering Terry Burkes 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: 10/31/2023

Sodergren,
Anne@DCA

Digitally signed by
Sodergren, Anne@DCA
Date: 2023.10.31 20:05:17
-07'00'

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

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