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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. 7660

13 **ERIK J. LAZCANO**
14 12181 18th St.
Yucaipa, CA 92399

DEFAULT DECISION AND ORDER

15 Pharmacy Technician License No. TCH
16 176578

[Gov. Code, §11520]

17 Respondent.

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19 **FINDINGS OF FACT**

20 1. On or about December 27, 2023, Complainant Anne Sodergren, in her official
21 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
22 Affairs, filed Accusation No. 7660 against Erik J. Lazcano (Respondent) before the Board of
23 Pharmacy. (Accusation attached as Exhibit A.)

24 2. On or about April 22, 2020, the Board issued Pharmacy Technician License No. TCH
25 176578 to Respondent. The Pharmacy Technician License expired on August 30, 2022, and has
26 not been renewed.

27 3. On or about December 28, 2023, Respondent was served by Certified and First Class
28 Mail copies of the Accusation No. 7660, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of
4 record was and is: 12181 18th St., Yucaipa, CA 92399.

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

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

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

13 6. The Board takes official notice of its records and the fact that Respondent failed to
14 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
15 waived his right to a hearing on the merits of Accusation No. 7660.

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

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

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
24 finds that the charges and allegations in Accusation No. 7660, are separately and severally, found
25 to be true and correct by clear and convincing evidence.

26 9. The Board finds that the actual costs for Investigation and Enforcement are \$1,753.75
27 as of February 23, 2024.

28 **DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent Erik J. Lazcano has subjected his
Pharmacy Technician License No. TCH 176578 to discipline.

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

1 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
2 License based upon the following violations alleged in the Accusation which are supported by the
3 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

4 a. Business and Professions Code section sections 4301, subdivision (l) and 490, in
5 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
6 convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy
7 technician. Specifically, on or about October 10, 2022, Respondent was convicted of one
8 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
9 having 0.08% or more, by weight, of alcohol in his blood] and one misdemeanor count of
10 violating Penal Code section 148, subdivision (a)(1) [resisting/obstructing an officer] in the
11 criminal proceeding entitled *The People of the State of California v. Erik J. Lazcano* (Super. Ct.
12 L.A., 2022, No. 2BL01318).

13 b. Business and Professions Code section 4301, subdivision (h), on the grounds of
14 unprofessional conduct, in that on or about September 5, 2021, Respondent used alcoholic
15 beverages and/or a controlled substance/dangerous drug to an extent or in a manner dangerous or
16 injurious to himself, any person, or the public.

17 c. Business and Professions Code section 4301, subdivision (j) for violating section
18 4060, in that on or about September 5, 2021, Respondent was found to be in possession of a
19 controlled substance/dangerous drug.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 176578, issued to Respondent Erik J. Lazcano, 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 May 16, 2024.

It is so ORDERED on April 16, 2024.

BOARD OF PHARMACY DEPARTMENT
OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

66601161.DOCX
DOJ Matter ID:LA2023603952

Attachment:
Exhibit A: Accusation

Seung W. Oh, Pharm. D.
Board President

Exhibit A

Accusation

1 ROB BONTA
Attorney General of California
2 ARMANDO ZAMBRANO
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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. 7660

13 **ERIK J. LAZCANO**
12181 18th St.
14 Yucaipa, CA 92399

ACCUSATION

15 Pharmacy Technician License No. TCH
176578

16 Respondent.
17

18
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 (Board), Department of Consumer Affairs.

22 2. On or about April 22, 2020, the Board issued Pharmacy Technician License Number
23 TCH 176578 to Erik J. Lazcano (Respondent). The Pharmacy Technician Registration expired on
24 August 30, 2022, and canceled on August 4, 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 unless otherwise indicated.

28 ///

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 5. Section 4300.1 states:

27 The expiration, cancellation, forfeiture, or suspension of a board-issued license
28 by operation of law or by order or decision of the board or a court of law, the

1 placement of a license on a retired status, or the voluntary surrender of a license by a
2 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.

3 **STATUTORY PROVISIONS**

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

7 7. Section 460 states:

8 A person shall not possess any controlled substance, except that furnished to a
9 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, nurse practitioner practicing pursuant to Section 2837.103 or 2837.104,
10 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
11 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
12 pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
possession of any controlled substance by a manufacturer, wholesaler, third-party
13 logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
14 physician assistant, if in stock in containers correctly labeled with the name and
address of the supplier or producer.

15 This section does not authorize a certified nurse-midwife, a nurse practitioner
16 practicing pursuant to Section 2836.1, a physician assistant, or a naturopathic doctor,
to order their own stock of dangerous drugs and devices.

17 8. Section 4301 states, in pertinent part:

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

20 . . .

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

24 . . .

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

26 . . .

27 (l) The conviction of a crime substantially related to the qualifications,
28 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

9. 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) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation that may be performed under the license type sought or held.

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

(1) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, governing the practice of pharmacy.

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

(3) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction,

relating to government provided or government supported healthcare.

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

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

COST RECOVERY

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

11. CONTROLLED SUBSTANCES / DANGEROUS DRUGS

“Cocaine,” is a narcotic drug according to Health and Safety Code section 11019, subdivision (e). It is a Schedule I controlled substance, as designated in Health and Safety Code section 11054, subdivision (f)(1), and a Schedule II controlled substance, as designated in Health and Safety Code section 11055, subdivision (b)(6). It is categorized as a dangerous drug according to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. Specifically, on or about October 10, 2022, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] and one misdemeanor count of violating Penal Code section 148, subdivision (a)(1) [resisting/obstructing an officer] in the criminal proceeding entitled *The People of the State of California v. Erik J. Lazcano* (Super. Ct. L.A., 2022, No. 2BL01318). The court ordered Respondent to complete a three-month first offender DUI program, and placed him on 36 months’ probation, with terms and conditions. The circumstances surrounding the conviction are that on or about September 5, 2021, at approximately 8:01 a.m., police officers initiated a traffic

1 enforcement stop after observing Respondent's vehicle traveling at a high rate of speed. While
2 speaking to Respondent an officer could smell the strong odor of alcohol emitting from his person
3 and observed him to have slurred speech. Respondent was instructed to sit on the sidewalk near
4 the passenger side of his vehicle but failed to do so while appearing hesitant and nervous after
5 which he attempted to flee the scene on foot. The foot pursuit resulted in the use of a taser after
6 Respondent failed to obey several verbal commands to stop. Respondent was subsequently
7 placed under arrest and transported to the hospital for a blood draw. During the blood draw, at
8 approximately 10:15 a.m., Respondent was found to be in possession of cocaine and the blood
9 sample that was provided revealed a blood alcohol content level of 0.17% and the presence of
10 cocaine as well.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Dangerous Use of Alcohol and/or Controlled Substance/Dangerous Drug)**

13 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
14 the grounds of unprofessional conduct, in that on or about September 5, 2021, Respondent used
15 alcoholic beverages and/or a controlled substance/dangerous drug to an extent or in a manner
16 dangerous or injurious to himself, any person, or the public. Complainant refers to, and by this
17 reference incorporates, the allegations set forth above in paragraph 12, as though fully set forth
18 herein.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Illegal Possession of a Controlled Substance/Dangerous Drug)**

21 14. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
22 violating section 4060, in that on or about September 5, 2021, Respondent was found to be in
23 possession of a controlled substance/dangerous drug. Complainant refers to, and by reference
24 incorporates, the allegations set forth above in paragraph 12, as though set forth fully.

25 **DISCIPLINE CONSIDERATIONS**

26 15. To determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges that on or about January 16, 2013, Respondent was convicted of one
28 misdemeanor count of violating Penal Code section 647, subdivision (f) [public intoxication] in

1 the criminal proceeding entitled *The People of the State of California v. Erik J. Lazcano* (Super.
2 Ct. San Bernardino County, 2013, No. 675961EL). The court placed Respondent on 24 months'
3 probation with terms and conditions.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician License Number TCH 176578, issued
8 to Erik J. Lazcano;
- 9 2. Ordering Erik J. Lazcano to pay the Board of Pharmacy the reasonable costs of the
10 investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3; and,
- 12 3. Taking such other and further action as deemed necessary and proper.

13
14
15 DATED: 12/27/2023

Sodergren,
Anne@DCA

Digitally signed by
Sodergren, Anne@DCA
Date: 2023.12.27
17:04:43 -08'00'

16 ANNE SODERGREN
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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