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

In the Matter of the Accusation Against:

**DAVID MORENO
8200 Jantzen Road, Space 25
Modesto, CA 95357**

Pharmacy Technician License No. 123693

Respondent.

Case No. 7749

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 29, 2024, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 7749 against David Moreno (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about May 16, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician License No. 123693 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 7749 and will expire on September 30, 2025, unless renewed.

3. On or about May 3, 2024, Respondent was served by Certified and First Class Mail copies of the Accusation No. 7749, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
3 is required to be reported and maintained with the Board. Respondent's address of record was
4 and is: 8200 Jantzen Road, Space 25, Modesto, CA 95357.

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. 7749.

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. 7749, 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 \$1,968.75
27 as of June 19, 2024.

28 **DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent David Moreno has subjected his
Pharmacy Technician License No. 123693 to discipline.

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

Exhibit A

Accusation

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
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6 Telephone: (916) 210-6277
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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. 7749

13 **DAVID MORENO**
14 **8200 Jantzen Road, Space 25**
Modesto, CA 95357

ACCUSATION

15 **Pharmacy Technician License No. 123693**

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, Department of Consumer Affairs.

22 2. On or about May 16, 2012, the Board of Pharmacy issued Pharmacy Technician
23 License Number 123693 to David Moreno (Respondent). The Pharmacy Technician License was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 September 30, 2025, unless renewed.

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

6 ...

7 (l) The conviction of a crime substantially related to the qualifications,
8 functions, and duties of a licensee under this chapter. The record of conviction of a
9 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
10 States Code regulating controlled substances or of a violation of the statutes of this
11 state regulating controlled substances or dangerous drugs shall be conclusive
12 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
15 fix the degree of discipline or, in the case of a conviction not involving controlled
16 substances or dangerous drugs, to determine if the conviction is of an offense
17 substantially related to the qualifications, functions, and duties of a licensee under this
18 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
19 contendere is deemed to be a conviction within the meaning of this provision. The
20 board may take action when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal or when an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent order under
23 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
24 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
25 dismissing the accusation, information, or indictment.

26 ...

27 **REGULATORY PROVISIONS**

28 9. California Code of Regulations, title 16, (Regulations) section 1770, subdivision (a),
states:

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

29 **COST RECOVERY**

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

34 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction)**

3 11. Respondent is subject to disciplinary action under Code sections 490, subdivision (a),
4 and 4301, subdivision (l), in that he was convicted of the following crime that is substantially
5 related to the qualifications, functions and duties of a licensed pharmacy technician as defined by
6 Regulations section 1770, subdivision (a): On about January 24, 2024, in the matter of the *State of*
7 *California v. David Moreno* (Stanislaus County Sup. Ct., Case No. CR-22-009980), the Court
8 convicted Respondent on his plea of nolo contendere to violating Vehicle Code section 23152,
9 subdivision (b) (driving a vehicle with a blood alcohol content [BAC] of .08 percent or more.), a
10 misdemeanor. Further, Respondent admitted to a special allegation for violation of Vehicle Code
11 section 23578 (BAC of .15 percent or more), Respondent admitted to having a BAC of 0.31%.
12 The circumstances are as follows:

13 12. On or about June 26, 2022, at approximately 2000 hours, an officer with the Modesto
14 Police Department was dispatched to a vehicle collision in Modesto, California. Upon contacting
15 the driver of the vehicle, who later was identified as Respondent, the officer observed that
16 Respondent was swaying from side to side, his speech was slurred, and he was slow to answer the
17 officer's questions. Respondent told the officer that he was the driver of the vehicle and stated
18 that he had consumed approximately 3-4 Modelos (beer), approximately 3 to 4 hours earlier.
19 Respondent was not able to tell the officer exactly where he was or the date and time, and
20 admitted that he could feel the effects of the alcohol. The officer asked Respondent to perform a
21 series of field sobriety tests and Respondent failed to successfully complete these tests.
22 Respondent submitted to a breathalyzer test and was determined to have a BAC of 0.31%.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Dangerous Use of Alcohol)**

25 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
26 in that on or about June 26, 2022, Respondent used alcohol in a manner dangerous or injurious to
27 himself or others when he drove a vehicle while intoxicated and under the influence of alcohol.
28 The facts and circumstances are more fully set forth above in paragraphs 11-12.

1 **OTHER MATTERS**

2 14. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician
3 License No. 123693 issued to David Moreno shall be prohibited from serving as a manager,
4 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
5 Pharmacy Technician License Number 123693 is placed on probation or until Pharmacy
6 Technician License Number 123693 is reinstated if it is revoked.

7 **PRAYER**

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

10 1. Revoking or suspending Pharmacy Technician License Number 123693, issued to
11 David Moreno;

12 2. Prohibiting David Moreno from serving as a manager, administrator, owner, member,
13 officer, director, associate, or partner of a licensee for five years if Pharmacy Technician License
14 Number 123693 is placed on probation or until Pharmacy Technician License Number 123693 is
15 reinstated if it is revoked;

16 3. Ordering David Moreno to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and, if placed on probation, the costs of probation monitoring; and,

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

20 DATED: 4/29/2024

21 **Sodergren,** Digitally signed by
Anne@DCA Sodergren, Anne@DCA
Date: 2024.04.29
08:17:48 -07'00'

22 ANNE SODERGREN
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 *Complainant*

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