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

In the Matter of the Accusation Against:	Case No. 7813
ANDREA MARIA LUTHER **4138 E. Howard Ct.** **Visalia, CA 93292**	**DEFAULT DECISION AND ORDER**
Pharmacy Technician License No. TCH 189167	[Gov. Code, §11520]
Respondent.	

FINDINGS OF FACT

1. On or about May 13, 2024, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 7813 against Andrea Maria Luther (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 11, 2022, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 189167 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 7813 and will expire on February 28, 2026, unless renewed.

3. On or about May 14, 2024, Respondent was served by Certified and First Class Mail copies of the Accusation No. 7813, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 4138 E. Howard Ct., Visalia, CA 93292.

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

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

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

6. The Board takes official notice of its records and the fact that Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 7813.

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

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

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, finds that the charges and allegations in Accusation No. 7813, are separately and severally, found to be true and correct by clear and convincing evidence.

9. The Board finds that the actual costs for Investigation and Enforcement are $1143.75 as of June 19, 2024.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Andrea Maria Luther has subjected her Pharmacy Technician License No. TCH 189167 to discipline.

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

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License 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 is subject to disciplinary action under Code sections 490, subdivision (a), and 4301, subdivision (*l*) (criminal conviction);

b. Respondent is subject to disciplinary action under Code section 4301, subdivision (h) (dangerous use of alcohol).

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 189167, issued to Respondent Andrea Maria Luther, is revoked.

IT IS FURTHER ORDERED pursuant to Code section 4307, Pharmacy Technician License No. TCH 189167 issued to Andrea Maria Luther, Andrea Maria Luther shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for until Pharmacy Technician License Number TCH 189167 is reinstated if it 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 August 21, 2024.

It is so ORDERED on July 22, 2024.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Seung W. Oh, Pharm.D.
Board President

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DOJ Matter ID:SA2024301707

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(ANDREA MARIA LUTHER)

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

In the Matter of the Accusation Against: **ANDREA MARIA LUTHER** 4138 E. Howard Ct. Visalia, CA 93292 **Pharmacy Technician License No. TCH 189167** Respondent.	Case No. 7813 **ACCUSATION**

PARTIES

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

2. On or about August 11, 2022, the Board of Pharmacy (Board) issued Pharmacy Technician License Number TCH 189167 to Andrea Maria Luther (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2026, unless renewed.

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JURISDICTION

3. This Accusation is brought before the 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 4011 provides that the Board shall administer and enforce the Pharmacy Law [Code section 4000 et seq.].

5. Code section 4300 states, in pertinent part, that every license issued may be suspended or revoked.

6. 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

7. Code section 490 states, in pertinent part:

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

…

8. Code section 4300 states, in pertinent part:

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

…

(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 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.

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

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 conduct shall include, but is not limited to, any of the following:

…

(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 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 the person to conduct with safety to the public the practice authorized by the license.

…

(*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.

…

10. Section 4307 of the Code states, in pertinent part:

(a) 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, partner, or any other person with management or control of any partnership, corporation, trust, 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 manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of 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 manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control 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.

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

…

REGULATORY PROVISIONS

11. 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.

COST RECOVERY

12. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

13. Respondent is subject to disciplinary action under Code sections 490, subdivision (a), and 4301, subdivision (*l*), in that she was convicted of the following crime that is substantially related to the qualifications, functions and duties of a licensed pharmacy technician as defined by Regulations section 1770, subdivision (a): On about January 17, 2023, in the matter of the *State of California v. Andrea Luther, aka(s) Andrea Maria Luther, Andrea Maria Archuleta* (Fresno County Sup. Ct., Case No. M22912483), the Court convicted Respondent on her plea of nolo contendere to violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a blood alcohol content [BAC] of .08 percent or more.), a misdemeanor. Respondent stipulated to having a BAC of 0.19%. The circumstances are as follows:

14. On or about September 23, 2022, at approximately 2155 hours, an officer with the California Highway Patrol was dispatched to a hit and run traffic collision in Fresno, California. A witness heard a loud bang, went outside, and saw that the driver of a vehicle, who was later identified as Respondent, had hit a mailbox. Respondent told the witness she was calling her

insurance company and then drove off. The witness followed Respondent until Respondent's vehicle became disabled. Upon contacting Respondent in the driver's seat of her vehicle, the officer observed that Respondent was emitting a strong odor of an alcoholic beverage. Respondent told the officer she had been in a traffic collision and was waiting for roadside assistance. The officer asked Respondent to perform a series of field sobriety tests and Respondent failed to successfully complete these tests. Respondent submitted to a breathalyzer test and was determined to have a BAC of 0.201/0.215%.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

15. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), in that on or about September 23, 2022, Respondent used alcohol in a manner dangerous or injurious to himself or others when he drove a vehicle while intoxicated and under the influence of alcohol. The facts and circumstances are more fully set forth above in paragraphs 13-14.

OTHER MATTERS

16. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician License No. TCH 189167 issued to Andrea Maria Luther, Andrea Maria Luther shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician License Number TCH 189167 is placed on probation or until Pharmacy Technician License Number TCH 189167 is reinstated if it is revoked.

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 License Number TCH 189167, issued to Andrea Maria Luther;

2. Prohibiting Andrea Maria Luther from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician

License Number TCH 189167 is placed on probation or until Pharmacy Technician License Number TCH 189167 is reinstated if it is revoked;

3. Ordering Andrea Maria Luther 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, if placed on probation, the costs of probation monitoring; and,

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

DATED: 5/9/2024

Sodergren, Anne@DCA Digitally signed by Sodergren, Anne@DCA Date: 2024.05.09 18:49:54 -07'00'

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

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