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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. 7166

13 **AMANDA R. BURCHARD**
14 **6730 Elmwood Road**
15 **San Bernardino, CA 92404**

DEFAULT DECISION AND ORDER

16 **Pharmacy Technician License No. TCH**
17 **115252**

[Gov. Code, §11520]

18 Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about October 25, 2021, Complainant Anne Sodergren, in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
23 Accusation No. 7166 against Amanda R. Burchard (Respondent) before the Board of Pharmacy.
24 (Accusation attached as Exhibit A.)

25 2. On or about November 18, 2011, the Board of Pharmacy (Board) issued Pharmacy
26 Technician License No. TCH 115252 to Respondent. The Pharmacy Technician License was in
27 full force and effect at all times relevant to the charges brought in Accusation No. 7166 and will
28 expire on December 31, 2022, unless renewed.

1 3. On or about October 29, 2021, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 7166, 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: 6730 Elmwood Road, San Bernardino, CA 92404.

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 her of the Accusation, and therefore
17 waived her right to a hearing on the merits of Accusation No. 7166.

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 as well as taking official notice of all the investigatory reports, exhibits and statements contained
27 therein on file at the Board's offices regarding the allegations contained in Accusation No. 7166,
28 finds that the charges and allegations in Accusation No. 7166, 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 \$4,189.75
as of November 22, 2021.

1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Amanda R. Burchard has
3 subjected her Pharmacy Technician License No. TCH 115252 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 Pharmacy Technician
6 License 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. Bus. & Prof. Code section 4060, Unlawful Possession of Dangerous Drug /
9 Controlled Substance;

10 b. Bus. & Prof. Code section 4301(f), Unprofessional Conduct; and

11 c. Bus. & Prof. Code section 4301(j), Unprofessional Conduct;

12 **ORDER**

13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 115252, issued to
14 Respondent Amanda R. Burchard, is revoked.

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

19 This Decision shall become effective on February 2, 2022 at 5:00 p.m.

20 It is so ORDERED on January 3, 2022.

21 FOR THE BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 Attachment:
25 Exhibit A: Accusation

By



26 Seung W. Oh, Pharm D.
27 Board President
28

Exhibit A

Accusation

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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. 7166

13 **AMANDA R. BURCHARD**
14 **6730 Elmwood Road**
San Bernardino, CA 92404

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **115252**

17 Respondent.

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21 **PARTIES**

22
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 November 18, 2011, the Board of Pharmacy issued Pharmacy Technician
26 License Number TCH 115252 to Amanda R. Burchard (Respondent). The Pharmacy Technician
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on December 31, 2022, unless renewed.

1 **JURISDICTION**

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 **STATUTORY PROVISIONS**

6 4. Section 4300 of the Code states:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

16 (c) The board may refuse a license to any applicant guilty of unprofessional
17 conduct. The board may, in its sole discretion, issue a probationary license to any
18 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
terms or conditions not contrary to public policy, including, but not limited to, the
following:

19 (1) Medical or psychiatric evaluation.

20 (2) Continuing medical or psychiatric treatment.

21 (3) Restriction of type or circumstances of practice.

22 (4) Continuing participation in a board-approved rehabilitation program.

23 (5) Abstention from the use of alcohol or drugs.

24 (6) Random fluid testing for alcohol or drugs.

25 (7) Compliance with laws and regulations governing the practice of pharmacy.

26 (d) The board may initiate disciplinary proceedings to revoke or suspend any
27 probationary certificate of licensure for any violation of the terms and conditions of
28 probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

(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.

5. Section 4300.1 of the Code 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.

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

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:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

...

(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.

(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.

1 7. Section 4022 of the Code states

2 Dangerous drug or dangerous device means any drug or device unsafe for
3 self-use in humans or animals, and includes the following:

4 (a) Any drug that bears the legend: Caution: federal law prohibits dispensing
5 without prescription, Rx only, or words of similar import.

6 (b) Any device that bears the statement: Caution: federal law restricts this
7 device to sale by or on the order of a _____, Rx only, or words of similar
8 import, the blank to be filled in with the designation of the practitioner licensed to use
9 or order use of the device.

10 (c) Any other drug or device that by federal or state law can be lawfully
11 dispensed only on prescription or furnished pursuant to Section 4006.

12 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
13 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
15 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

17 9. Section 4060 of the Code states:

18 No person shall possess any controlled substance, except that furnished to a
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
21 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
22 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
23 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
24 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
25 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
26 shall not apply to the possession of any controlled substance by a manufacturer,
27 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
28 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
29 physician assistant, when in stock in containers correctly labeled with the name and
30 address of the supplier or producer.

31 Nothing in this section authorizes a certified nurse-midwife, a nurse
32 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
33 stock of dangerous drugs and devices.

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

1 **DEFINITIONS**

2 11. Oxycodone is a schedule II controlled substance pursuant to Health and Safety Code
3 section 11055(b)(1) and a dangerous drug pursuant to Business and Professions Code section
4 4022(c).

5 **FACTUAL ALLEGATIONS**

6 12. From April 5, 2021, through April 16, 2021, Respondent was employed as a
7 pharmacy technician at DK Homecare Pharmacy in San Bernardino County.

8 13. Respondent worked a shift at DK Homecare Pharmacy on April 15, 2021. On that
9 shift, the pharmacist on duty was conducting an inventory of drugs stored in the pharmacy's
10 schedule II drug safe when he was called away to take a phone call. Only the pharmacist was
11 allowed to access the schedule II drug safe.

12 14. Respondent accessed the open schedule II drug safe while the pharmacist was on the
13 phone. Respondent put a medication bottle into a tote, and then walked with the tote to a non-
14 controlled medication aisle.

15 15. The pharmacist then approached respondent, told her that only the pharmacist was
16 allowed to access the schedule II drug safe, and told her that he wanted to check the tote.

17 16. Respondent told the pharmacist that she understood and, as she began walking
18 towards the pharmacist, respondent put a medication bottle into her back pocket so that the
19 pharmacist would not see it.

20 17. On April 16, 2021, pharmacy staff discovered that a bottle of Oxycodone was
21 missing. Pharmacy staff reviewed video surveillance of April 15, 2021, discovered that
22 respondent stole the bottle of Oxycodone, and contacted law enforcement. Respondent was
23 arrested. A search of respondent's bedroom was conducted, and a manufacturer's bottle of
24 Oxycodone pills and approximately 50 oxycodone pills were found. Respondent admitted that
25 she had stolen drugs from the pharmacy.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unlawful Possession of Dangerous Drug / Controlled Substance)

3 18. Paragraphs 12 through 17 are incorporated by this reference.

4 19. Respondent is subject to disciplinary action under Code section 4060, in that on April
5 15, 2020 Respondent stole a bottle of Oxycodone pills, a dangerous drug and a controlled
6 substance, from DK Homecare Pharmacy.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct)

9 20. Paragraphs 12 through 17 are incorporated by this reference.

10 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
11 in that respondent committed unprofessional conduct by committing an act of moral turpitude,
12 dishonesty, fraud, and deceit by stealing a bottle of Oxycodone pills, a dangerous drug and a
13 controlled substance, from DK Homecare Pharmacy.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct)

16 22. Paragraphs 12 through 17 are incorporated by this reference.

17 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
18 in that respondent committed unprofessional conduct by violating the drug laws of California or
19 of the United States by stealing a bottle of Oxycodone pills, a dangerous drug and a controlled
20 substance, from DK Homecare Pharmacy.

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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 License Number TCH 115252, issued to Amanda R. Burchard;

2. Ordering Amanda R. Burchard 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: 10/23/2021

Signature on File

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

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