

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

In the Matter of the Accusation Against:

BRENNAN ALEJANDRO PINEDA, Respondent

Pharmacy Technician Registration No. TCH 99508

Agency Case No. 6721

OAH No. 2019100920

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on December 23, 2020.

It is so ORDERED on November 23, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", is written over the printed name.

By

Greg Lippe
Board President

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

In the Matter of the Accusation against:

BRENNAN ALEJANDRO PINEDA,

Pharmacy Technician Registration No. TCH 99508,

Respondent.

Agency No. 6721

OAH No. 2019100920

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video and teleconference on August 24, 2020.

Kim Kasrelievich, Deputy Attorney General, represented complainant Anne Sodergren, Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Respondent Brennan Alejandro Pineda appeared on his own behalf.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 24, 2020.

FACTUAL FINDINGS

Jurisdiction

1. On March 22, 2011, the Board issued pharmacy technician registration number TCH 99508 to respondent. The registration was in full force and effect at all times relevant and was scheduled to expire on August 31, 2020.¹

2. On August 8, 2019, complainant executed the Accusation in her official capacity. Respondent timely filed a notice of defense.

The Incident

3. On October 30, 2018, at almost 9:00 p.m., respondent reported for work on the night shift at St. Vincent Medical Center (St. Vincent). At 12:45 a.m., respondent went on a scheduled 30-minute break.

4. Mai Vuong, the hospital staff pharmacist on duty, supervised respondent. She testified that, on the day in question, respondent was doing his work correctly. When respondent did not return after his break, she called him on his cellphone but he did not answer. She called him every hour until 5:00 a.m., when Tatyana Lyan, the pharmacy technician for the next shift arrived and went to look for him. She found respondent in the hospital cafeteria and told Ms. Vuong that respondent had passed out. Ms. Vuong ran to the cafeteria and found respondent non-responsive and slumped over a table. Ms. Vuong could not hear respondent breathe or feel a pulse;

¹ The Board retains jurisdiction to discipline expired registrations. (Bus. & Prof. Code, § 4300.1.)

she thought he was having a seizure and called for a “Code Blue.” Emergency physicians rushed respondent to the hospital’s emergency room, where a toxicology test was conducted. Respondent was found to have a blood alcohol content of 0.39 percent.

5. Yoon Hee Kim, the Pharmacy Director at St. Vincent for the past six years, arrived at the hospital shortly after 6:00 a.m., after Ms. Vuong called her to report the Code Blue. Ms. Kim went to the emergency room and observed respondent talking with a nurse, which Ms. Kim found reassuring. Ms. Kim wrote, in a letter to the Board, in compliance with her duty to notify the Board of any misconduct by licensed staff, that respondent arrived at work under the influence of alcohol and passed out during his break. Believing respondent’s conduct created a patient safety issue, Ms. Kim drafted a Notice of Disciplinary Action and submitted it to the Board. The hospital suspended and ultimately terminated respondent’s employment for a violation of its alcohol and drug misuse policy.

Duties of Pharmacy Technician

6. Ms. Vuong testified that a pharmacy technician answers the pharmacy telephone, fills prescriptions, works in the intravenous (IV) room filling IV medication orders, makes hourly deliveries on the hospital floor, and reports to her.

Mitigation and Rehabilitation

7. Respondent readily acknowledged the truth of Ms. Vuong’s and Ms. Kim’s testimony. He went to work on the night in question intoxicated. He explained that he had gotten no sleep that day; he had been at a Halloween parade for his 12-year-old son after working 3:30 to midnight the night before. Respondent testified that he became sober on January 1, 2018, but suffered a relapse on October 30, 2018.

He had trouble switching from the graveyard shift to the morning shift and did not have a support system in place to assist him with that transition. He testified he “made a big, life-changing mistake.” He is trying to make it right and hopes the Board will give him a second chance.

8. After the incident at St. Vincent, respondent was hired by Providence St. Joseph Hospital in Burbank (St. Joseph). He has worked there nearly two years and has improved his living situation for himself and his son. He informed St. Joseph of the situation at St. Vincent; he testified that his new employer was somewhat apprehensive about hiring him but that he has proven himself over the past two years.

9. Respondent testified that what he did was wrong, and his action has “haunted” him, but he has had no choice but to work to improve his life. He moved into a sober living house on March 22, 2019, because he knew he needed help and wanted to change his life. Though respondent and his son’s mother share custody, his son has been living with his mother since the pandemic because respondent works in a hospital that has COVID-19 patients. Respondent provides them with financial support. Respondent plans to move out of the sober living environment and into a living situation with his sober friends if he can pay rent, which will depend on whether his license status enables him to continue to perform licensed work.

10. Respondent introduced performance notes from Ivy Skifstad, a supervising pharmacist at St. Joseph, to Avetis Manukyan, the person who hired him at St. Joseph; and character reference letters from Jason Goldstein, the house manager at respondent’s sober living house, and Jimmy Gonzales, the sober living director at respondent’s facility.

(a) Ms. Skifstad wrote that respondent is thorough in his work, gets along well with other staff, and has a fantastic attitude. (Ex. A.)

(b) Mr. Goldstein wrote that respondent is willing and open-minded, that he is drug-tested weekly and has abstained from drugs and alcohol, and that there has been "a dramatic change in [respondent's] character. He is not the same guy when he came in the house. He has put in a lot of work to change his attitude and his behavior. He takes his recovery very seriously. [He] has a bright future ahead of him. He is a responsible father" (Ex. B.)

(c) Mr. Gonzales wrote that respondent is a strong member of the program, works well with other residents, and "has embodied the principles that we try to promote our guys here at SBSL to soak in. [Respondent] has been consistent with sobriety and has done everything we have asked of him since entering our program. . . . [He] has shown that he is ready to handle the life situations that he will face after leaving the sober living community." (Ex. E.)

11. Respondent submitted documentation of a 2020 annual performance review, showing that he has performed well and met his employer's goals. He testified there are no issues at St. Joseph and that he works hard.

12. Respondent sent an email on March 3, 2019, to Katherine Sill, an inspector with the Department. He wrote that he wanted "to make an honest and clear statement" to the Board and that his work as a pharmacy technician "is my livelihood and my life." (Ex. 8.) He explained the incident, writing that he had a few drinks after going many hours without sleep before his shift, but wrote, "I am not a drinker" (*Ibid.*) When he wrote this, respondent testified, it was not a true statement. He also wrote that he never had drinking-related issues at work, which was true. He was sober

for about 10 months before the incident at St. Vincent and had never had a conviction or any legal issues related to alcohol use. He became sober on January 1, 2018, for his own benefit and that of his son. He was still drinking while raising his son; though he was not getting “hammered,” he made a New Year’s resolution to get sober and healthy. He stopped drinking and started exercising.

13. Admitting that he is an alcoholic, respondent testified that his new sobriety date is March 23, 2019. He believes he will not relapse, as he now has the right support tools in place, including a sponsor through Alcoholics Anonymous (AA). Respondent considers his support system to include his mother, his AA sponsor, his girlfriend, and his son. He speaks to his son every day.

14. Respondent completed AA’s 12 steps on June 14, 2020, but has not started them again. Live meetings stopped in mid-March, replaced by Zoom meetings twice each week. The participants do not work the steps now but share their experiences. He plans to attend AA meetings in person once the pandemic abates. He speaks to his sponsor two or three times each day, discussing his day in detail. Respondent would like to start sponsoring young people and share his experience.

15. Respondent wakes up each day, meditates, performs chores, exercises, prepares and eats a meal, goes to work, and visits his girlfriend. He is no longer the person he was when the incident occurred, he testified; he attends church regularly, is committed to his new lifestyle, and is going to marry a sober woman. He testified, “I’ll never touch alcohol again.” Only the issue of his licensure concerns him now. He testified there will be no further incidents like the one at St. Vincent; he has too much to lose. He is grateful to the Board for allowing him to keep his license while working at St. Joseph.

Costs

16. The Board incurred investigation costs of \$1,421.75 and prosecution costs of \$6,880, for a total of \$7,022.75. The costs of prosecution are reasonable. The reasonableness of the investigation costs cannot be determined from the record. Evidence of the costs of investigation appears in a one-page Certification of Costs of Investigation by Agency signed by complainant. It reflects inspector's costs of \$1,421.75, calculated based on 11.75 hours of work at \$121 per hour. There is no description of tasks performed or time spent on each task.

LEGAL CONCLUSIONS

1. The Board is responsible for licensing and disciplining pharmacy technicians. (Bus. & Prof. Code, § 4300.)² The Board's highest priority is protection of the public. (§ 4001.1.)

2. The Board may revoke or suspend a registration for unprofessional conduct if the registrant has used alcoholic beverages to the extent or in a manner dangerous or injurious to the licensee or any other person or in a manner that impairs the licensee's ability to practice (§ 4301, subd. (h)). It is a misdemeanor for any person, while on duty, to dispense any drug while under the influence of alcohol. (§ 4327.) An act is substantially related to the qualifications, functions, or duties of a licensee or registrant if it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770.)

² All further statutory references are to the Business and Professions Code.

3. Cause exists to suspend or revoke respondent's pharmacy technician registration under section 4301, subdivision (h), for using alcohol to an extent that was dangerous to himself and others, as set forth in Factual Findings 3 through 7, and 12. Respondent's use of and being under the influence of alcohol while at work was dangerous to others and to the public and substantially related to the qualifications, functions, or duties of a licensee.

4. Cause exists to suspend or revoke respondent's pharmacy technician registration under section 4327, in that respondent dispensed prescription drugs at the hospital pharmacy while under the influence of alcohol, as set forth in Factual Findings 3 through 7, and 12.

5. The Board has adopted Disciplinary Guidelines (Rev. 2/2017), incorporated by reference at California Code of Regulations, title 16, section 1760, for use in reaching a decision on a disciplinary action under the Administrative Procedure Act. The Disciplinary Guidelines provide that the Board is to consider criteria including the nature and severity of the acts under consideration, actual or potential harm to the public, respondent's prior disciplinary record, aggravating, mitigating, and rehabilitation evidence, and time passed since the acts occurred.

6. Respondent has satisfied some of the relevant regulatory criteria for mitigation and rehabilitation, as set forth in Factual Findings 7 through 15. Respondent readily admitted to having committed the act leading to the termination of his employment at St. Vincent. He committed the act of working while intoxicated less than two years ago and has been sober for about 18 months. Respondent disclosed his conduct to his current employer and has made significant changes in his life to avoid repeating his act and provides reassurance that it will not recur. He offered information about his efforts to pursue his career, and information about his

involvement in AA, with his girlfriend, and with his son. The evidence does not warrant revocation; the public interest would be protected if respondent were granted a probationary license. The accompanying order is appropriate to protect the public.

7. The Board is entitled to reasonable costs of enforcement in the amount of \$6,880, as set forth in Factual Finding 16. (§ 125.3.) Costs of investigation are disallowed; their reasonableness could not be determined from this record due to failure to comply with California Code of Regulations, title 1, section 1042, subdivision (b).

ORDER

Pharmacy technician registration number TCH 99508, issued to respondent Brennan Alejandro Pineda, is revoked; the revocation is stayed, however, and respondent is placed on probation for three years on the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible

manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number , and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 6721, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6721, and the terms and

conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of prosecution in the amount of \$6,880. Respondent shall make said payments as follows:

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

Respondent shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any

extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

11. Certification Prior to Resuming Work

Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the

board within ten (10) days of receipt. Failure to maintain active, current certification or to timely submit proof of same shall be considered a violation of probation.

12. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

13. Violation of Probation

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

15. Drug and Alcohol Testing

Respondent, at his own expense, shall participate in testing as directed by the board or its designee for the detection of alcohol, controlled substances, and dangerous drugs and/or dangerous devices. Testing protocols may include biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other testing protocols

as directed by the board or its designee. All testing must be pursuant to an observed testing protocol, unless respondent is informed otherwise in writing by the board or its designee. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the board or its designee.

By no later than thirty (30) days after the effective date of this decision, respondent shall have completed all of the following tasks: enrolled and registered with an approved drug and alcohol testing vendor; provided that vendor with any documentation, and any information necessary for payment by respondent; commenced testing protocols, including all required contacts with the testing vendor to determine testing date(s); and begun testing. At all times, respondent shall fully cooperate with the testing vendor, and with the board or its designee, with regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to cooperate timely shall be considered a violation of probation.

Respondent may be required to test on any day, including weekends and holidays. Respondent is required to make daily contact with the testing vendor to determine if a test is required, and if a test is required must submit to testing on the same day.

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, respondent shall seek and receive approval from the board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, respondent shall enroll and register with the approved alternate drug testing vendor, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by respondent. During the period of absence of the area, respondent shall commence testing protocols with the alternate

vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the board or its designee, or to timely enroll and register with, timely commence testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its designee may require respondent to timely provide documentation from a licensed practitioner authorized to prescribe the detected substance demonstrating that the substance was administered or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such documentation shall be provided by respondent within ten (10) days of being requested.

Any of the following shall be considered a violation of probation and shall result in respondent being immediately suspended from practice as a pharmacy technician until notified by the board in writing that he may resume practice: failure to timely complete all of the steps required for enrollment/registration with the drug testing vendor, including making arrangements for payment; failure to timely commence drug testing protocols; failure to contact the drug testing vendor as required to determine testing date(s); failure to test as required; failure to timely supply documentation demonstrating that a detected substance was taken pursuant to a legitimate prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken

pursuant to a legitimate prescription and a necessary treatment, the board or its designee shall inform respondent of the suspension and inform him to immediately leave work, and shall notify respondent's employer(s) and work site monitor(s) of the suspension.

During any such suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances.

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices.

Failure to comply with any such suspension shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

16. Abstain from Drugs and Alcohol

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a necessary part of treatment. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

17. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend the number of group meetings per week or month directed by the board or its designee, which shall typically be at least one per week. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

Where respondent is enrolled in the PRP, participation as required in a recovery group meeting approved by the PRP shall be sufficient for satisfaction of this

requirement. Any deviation from participation requirements for the PRP-approved group shall be considered a violation of probation.

DATE: October 6, 2020

DocuSigned by:
Howard W. Cohen
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Administrative Law Judge

Office of Administrative Hearings

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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. 6721

13 **BRENNAN ALEJANDRO PINEDA**

14 331 E. Marker Lane
Long Beach, CA 90805

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **99508**

17 Respondent.

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19
20 **PARTIES**

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

23 2. On or about March 22, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 99508 to Brennan Alejandro Pineda (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2020, unless renewed.

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JURISDICTION

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

4. 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.”

5. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

...

(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.”

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Dangerous Use of Alcohol)**

3 9. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
4 in that Respondent used alcohol to an extent that was dangerous to himself and others. The
5 circumstances are as follows:

6 10. On or about October 30, 2018, at approximately 8:55 p.m., Respondent reported for
7 work at St. Vincent Medical Center. At approximately 12:45 a.m., Respondent went on his break.
8 The pharmacist on duty was unable to locate Respondent when his break concluded. At
9 approximately 5:00 a.m., Respondent was found non-responsive and slumped over a table in the
10 hospital cafeteria. Respondent was rushed to the hospital's emergency room. A toxicology test
11 was conducted on Respondent which identified a blood ethanol level of .39%.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dispensing/Selling/Compounding Drugs While Under the Influence of Alcohol)**

14 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (o)
15 in conjunction with Code section 4327 in that Respondent dispensed and sold prescription drugs
16 while on duty at the pharmacy and while under the influence of alcohol. Complainant refers to
17 and by this reference incorporates, the allegations set forth above in paragraph 10, as though set
18 forth fully.

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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 Registration Number TCH 99508, issued to Brennan Alejandro Pineda;
2. Ordering Brennan Alejandro Pineda 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: August 8, 2019



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

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