

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

In the Matter of the Accusation Against:

BERTHA A. SANCHEZ, Respondent

Pharmacy Technician Registration No. TCH 56093

Agency Case No. 6813

OAH No. 2020010987

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 July 29, 2020.

It is so ORDERED on June 29, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", written in a cursive style.

By

Greg Lippe
Board President

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation against:

BERTHA A. SANCHEZ

**Pharmacy Technician Registration No. TCH 56093,
Respondent**

Agency No. 6813

OAH No. 2020010987

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by telephone on May 4, 2020.

Michael A. Cacciotti, Deputy Attorney General, represented and appeared on behalf of complainant Anne Sodergren, Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Bertha A. Sanchez appeared and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 4, 2020.

ISSUES PRESENTED

Is respondent's pharmacist technician registration subject to discipline because of her criminal conviction for driving while intoxicated? If so, what discipline is appropriate?

SUMMARY

Complainant seeks to discipline respondent's pharmacy technician registration because of her criminal conviction for driving while intoxicated and her dangerous use of alcohol. At hearing, respondent offered convincing evidence of rehabilitation and mitigation, thus demonstrating that outright revocation of her registration is not justified. The recency of respondent's criminal conviction and the serious nature of her offense, however, warrants further monitoring by the Board. Accordingly, placing respondent's registration on probation is necessary and appropriate to protect the public interest.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 20, 2004, the Board issued Pharmacy Technician Registration number TCH 56093 to respondent. Respondent's registration is scheduled to expire on December 31, 2021.

2. On November 12, 2019, complainant, in her official capacity, served the Accusation on respondent. Respondent timely filed a notice of defense. This hearing followed.

Respondent's Criminal Conviction

3. On June 27, 2019, the court convicted respondent, on her plea of guilty, of violating Vehicle Code sections 23152, subdivision (a), driving under the influence (DUI), and 23152, subdivision (b), DUI with a blood alcohol level exceeding 0.08 percent, both misdemeanors. (Super. Ct., San Bernardino County, case number MWV19008981.) The court ordered respondent to participate in a county jail weekend/work release program for 30 days (with credit for one day served) and placed respondent on summary probation with terms and conditions for three years, with an expected end date of June 26, 2022. The court also ordered respondent to complete a nine-month DUI program and to pay restitution of \$1,923.

4. The circumstances underlying respondent's criminal convictions are that on February 16, 2019, respondent left a bar intoxicated. She then drove with a passenger in her vehicle, turned into a parking lot, and crashed into a light pole. Respondent was not speeding at the time she hit the pole. Neither she nor her passenger sustained any injuries because of the collision. Respondent was arrested after police officers were called, and she submitted to a blood alcohol test, which showed a 0.271 percent blood alcohol concentration with an estimated uncertainty of 0.013 percent.

Duties of Pharmacy Technicians

5. Julia Krumer, Pharm. D, an inspector for the Board, testified about the duties of pharmacy technicians. Dr. Krumer, a licensed pharmacist for 14 years, has

worked for the Board for four years. Her duties include routine inspection of pharmacies in institutional and retail settings, investigating complaints, and assisting licensees with legal compliance. Before working for the Board, Dr. Krumer worked as a pharmacist at several different independent pharmacies as well as in the pharmacy department of a large retail chain store. Dr. Krumer testified that a DUI conviction is substantially related to the duties and functions of a licensee because, if employed in a pharmacy, the pharmacy technician must be reliable, trustworthy, professional, and show good judgment. According to Dr. Krumer, a pharmacy is a stressful working environment, and the possibility of impairment could lead to mistakes with dire outcomes.

Rehabilitation and Mitigation

6. Respondent is 41 years old. She shares joint custody of her 11-year-old child and is also the mother of three adult children.

7. Respondent has no history of license discipline. Her February 2019 arrest is her first and only arrest, and she has no other criminal convictions.

8. Respondent testified she made a “poor choice” by drinking and driving on the night of her arrest and she will regret her decision for the rest of her life. Respondent stated she had never done anything like it, and, to this day, she is shocked and embarrassed by her conduct. At the time, respondent was in a difficult and vulnerable emotional state. She was depressed, lonely, and under financial pressure. Her mother had just passed away, her relationship of 15 years had ended, she had outstanding debts, and she was unemployed. On the night she was arrested respondent did not want to be alone and went to a bar. Respondent had never gone to a bar by herself, and it was the first time she went to this bar. Respondent only

remembers drinking two 16-ounce mugs of beer. She does not remember anything else about the evening.

9. Respondent has complied with the terms of her probation. Respondent wore a monitoring device for two weeks without incident. She continues to pay restitution according to the court-mandated schedule. In addition, respondent enrolled in the court-ordered 9-month DUI program on July 23, 2019, and has diligently attended weekly two-hour sessions consisting of group and individual counseling as well as classroom instruction. Respondent has found the sessions to be valuable because they have taught her the importance of sharing her feelings with her friends and others in her support network.

10. Respondent also engaged in self-help to learn techniques to prevent any recurrence of the February 2019 incident. She read several books and articles on dealing with depression and loneliness. She reaches out to her friends and family when she needs to talk about personal issues. She is involved in a new stable relationship. In addition, respondent has a dedicated support system in place consisting of her friends, work colleagues, and family. As a result, respondent no longer has a sense of overwhelming loneliness, and she no longer considers herself depressed.

11. Respondent worked as a pharmacy technician from 2005 until 2018. She started as a pharmacy technician at Montclair Hospital Medical Center (Montclair Hospital). She then transferred to Desert Valley Hospital, where she worked for two years. Respondent then transferred to St. Mary's Hospital (St. Mary's), where she worked for five years until 2013. Respondent then transferred back to Montclair Hospital, where she worked for a short while, before moving to Providence Little Company of Mary Medical Center (Providence).

12. In 2018, respondent left her job at Providence to take care of her ailing mother. Her mother passed away shortly thereafter. Respondent did not return to work as a pharmacy technician because she had a tough time dealing with her mother's death. Currently, respondent works full-time at an Amazon warehouse, working 10-hour shifts, five days a week. She also works as a caregiver for special-needs children.

13. Respondent testified she does not suffer from alcoholism and she is not a frequent drinker. Respondent has not drunk any alcohol this year since New Year's Eve. Respondent would have no issue if the Board ordered her to abstain from alcohol. Complainant did not offer evidence to show that respondent has a recurring issue with alcohol.

14. In addition to working at her two jobs, respondent also volunteers her time to help families with special-needs children. Oftentimes families do not have the financial wherewithal to pay for respite care, and respondent will offer to provide such care several hours a week without charge. She learns of the family's requests through her work at 24-hour Home Health Care.

15. Marlissa Sandoval, a former registered pharmacy technician, testified on respondent's behalf at the administrative hearing and also submitted a letter on respondent's behalf. Ms. Sandoval was respondent's trainer and co-worker at St. Mary's, and she has known respondent for 11 years. Ms. Sandoval testified that respondent was a reliable, responsible, and professional pharmacy technician and that her work was beyond reproach. Ms. Sandoval believed the February 2019 DUI incident was out of character for respondent and was an isolated incident unlikely to recur, describing the offense as "very unusual and unexpected." (Ex. 8, p. AGO-063.) Ms. Sandoval also corroborated respondent's testimony about her emotional state at the

time of her arrest. According to Ms. Sandoval, respondent was suffering because of her mother's death and the breakup of a long-term relationship. Ms. Sandoval testified respondent was working on her interpersonal skills to deal with her emotions and to avoid the circumstances that led to respondent's arrest. Ms. Sandoval noted, both in testimony and in her letter, that respondent has gained insight into the causes of the DUI incident and learned techniques to stem her loneliness and depression. Ms. Sandoval has witnessed a change in respondent's behavior since the arrest; respondent now is more open and more willing to share her feelings. Ms. Sandoval also noted respondent drinks rarely, and when respondent drank at her house (at New Year's Eve), she stayed over to avoid drinking and driving. Ms. Sandoval asserted she has no reservations about respondent resuming her pharmacy technician duties because she did not believe respondent presents any danger to the public.

16. Respondent offered three additional reference letters from past colleagues and friends, all of whom were aware of her criminal conviction and her past work. These letters attest to respondent's commitment to rehabilitation and positive change. (See *Werner v. State Bar* (1954) 42 Cal.2d 187, 196-197; *Preston v. State Bar* (1946) 28 Cal. 2d 643, 650-651 [character references of friends and associates are entitled to careful consideration and should weigh heavily in the scales of justice].) Each letter, as detailed below, praises respondent's work skills, dedication, and integrity.

A. Katie Farmer, a certified pharmacy technician now working in Texas, worked with respondent at St. Mary's for 11 years. In her letter, Ms. Farmer notes respondent's morals and integrity as well as her dedication to her family, work, and her friends. (Ex. A.)

B. Veronica Elias has known and worked with respondent for over 10 years. She describes respondent in her letter as a "very capable person and hard working pharmacy technician." Ms. Elias reports that respondent "does not have a history of making poor choices in the years I have known her." According to Ms. Elias, respondent does not have a history of driving under the influence and would be unlikely to repeat the offense. Ms. Elias characterizes respondent as a private person who is working on expressing and sharing her emotions. (Ex. 8, p. AGO-065.)

C. Georgina Orona is a pharmacy technician who worked with respondent for six years and has known her for 13 years. Ms. Orona was respondent's lead technician at St. Mary's for four years. In her letter, she notes respondent to be "persistent, capable, and determined." (Ex. 8, p. AGO-064.)

17. Respondent testified in a credible and straightforward manner. She expressed genuine remorse for her conduct. She demonstrated that the DUI was an isolated event and the likelihood of recurrence is remote. Respondent wants to maintain her registration and to resume her work as a pharmacy technician.

Costs

18. The Board seeks reimbursement of \$6,878.75 in prosecution costs, consisting of \$5,118.75 of billed costs and \$1,760 of costs of unbilled costs. Of the billed costs, 13.25 hours totaling \$2,915 were incurred by attorneys and 10.75 hours totaling \$2,203.75 were incurred by a paralegal working on the matter. These costs are unreasonable given the Accusation is based on a single criminal conviction and complainant's only witness was not involved in the investigation of respondent's conduct. Accordingly, 50 percent of the requested costs, or \$3,439.33, is deemed reasonable.

19. Respondent has no savings, and her earnings are not enough to cover her expenses. In addition to household costs, she pays court-ordered restitution and fees to the court-ordered DUI program. Respondent still has outstanding bills for her mother's funeral. Respondent does not have a car, and she relies on Uber to travel.

LEGAL CONCLUSIONS

1. The Board is responsible for licensing and disciplining pharmacy technicians. (Bus. & Prof. Code¹, §§ 4202, 4300.) The Board's highest priority is protection of the public. (§ 4001.1.)

2. The Board may revoke or suspend a pharmacy technician registration for unprofessional conduct if the registrant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a pharmacy technician (§§ 490, 4301, subd. (f); Cal. Code Regs., tit. 16, § 1770), or used alcoholic beverages to the extent or in a manner dangerous or injurious to the registrant or any other person or in a manner that impairs the registrant's ability to practice (§ 4301, subd. (h)).

3. A crime or act is substantially related to the qualifications, functions, or duties of a registrant if it evidences present or potential unfitness of a registrant to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770.) A criminal conviction for driving with a high blood alcohol content is substantially related and sufficient

¹ All statutory references are to the Business and Professions Code unless otherwise stated.

cause to discipline a license or registration. (See, e.g., *Sulla v. Board of Registered Nursing*, 205 Cal.App.4th 1195, 1204-1206.) As noted in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 762, 770, driving under the influence “reflect[s] a lack of sound professional and personal judgment,” threatens the safety of the public, and demonstrates both a disregard of the medical knowledge of the effects of alcohol and of the legal prohibitions against drinking and driving.

4. Cause exists to suspend or revoke respondent’s pharmacy technician registration for conviction of a crime substantially related to the qualifications, functions, or duties of a registrant, under sections 490, subdivision (a)(1), and 4301, subdivision (f), in conjunction with California Code of Regulations, title 16, section 1770, based on the matters set forth in Factual Findings 3 and 4. Respondent was convicted of driving with a blood alcohol content of 0.27 percent, a dangerous act substantially related to the qualifications, functions, and duties of a pharmacy technician. (Legal Conclusion 3.)

5. Cause exists to suspend or revoke respondent’s pharmacy technician registration for unprofessional conduct in that she used alcoholic beverages to an extent or in a manner dangerous or injurious to herself or others, under section 4301, subdivision (h), as set forth in Factual Findings 3 and 4.

6. The Board Disciplinary Guidelines (revised 2/2017) set forth certain criteria to consider when assessing respondent’s rehabilitation and the appropriate discipline. These criteria include the actual or potential harm to the public caused by respondent’s actions, actual or potential harm to any consumer, respondent’s prior disciplinary record, prior warnings by the Board, number and variety of current violations, the nature and severity of the acts, offenses, and crimes under consideration, aggravating, mitigating, and rehabilitation evidence, compliance with

terms of sentences and probation, overall criminal record, evidence of conviction dismissals under Penal Code section 1203.4, time passed since the acts or offenses occurred, whether the conduct was intentional or negligent, and financial benefit to the applicant from the misconduct.

7. Respondent engaged in a serious offense, drinking and then driving in a manner that could have endangered other persons and that did cause damage to property. Her crimes are recent, and she remains on summary probation. These concerns, however, are significantly mitigated by respondent's past and present conduct as set forth in Factual Findings 6 through 17. Respondent readily admits to having committed the act underlying her criminal conviction and expressed remorse for her actions. This is respondent's first and only arrest and criminal conviction. The conviction stems from a single incident. The incident did not occur while respondent was employed as a pharmacy technician. Respondent's registration has never been disciplined. There is no evidence that respondent suffers from alcohol dependency or from any drug dependency, or that she abuses alcohol or controlled substances. Respondent was under tremendous personal stress at the time she committed the offense. She has completed most of the terms of probation. Respondent is currently working two jobs and volunteering her services to children in need. She offered evidence showing she had disclosed her conviction to her colleagues and friends, and those colleagues and friends submitted letters and testified on her behalf. Respondent has made changes in her life to avoid repeating the act she committed that led to her conviction and provided reassurance that it will not recur.

8. Under the Disciplinary Guidelines, the recommended discipline for respondent's violations ranges from revocation to actual suspension and three to five

years of probation. Five years of probation is recommended in cases involving the abusive use of alcohol.

9. The task in disciplinary cases is preventative, protective, and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.) Respondent's evidence of rehabilitation and the absence of any prior discipline or other criminal conviction demonstrate that the maximum recommended discipline, i.e., revocation, is not warranted and a three-year, instead of a five-year, period of probation will protect the public interest. In addition, neither biological testing or attendance at support groups, all recommended for alcohol-related convictions by the Disciplinary Guidelines, is not necessary here given the undisputed evidence that respondent does not have an alcohol abuse problem and her DUI conviction was a one-time, isolated event unlikely to reoccur.

Costs

20. The reasonable costs of enforcement in this matter are \$3,439.33 as set forth in Factual Finding 17. The Board must consider respondent's financial resources before ordering payment of these costs. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

21. Respondent's financial circumstances, as noted in Factual Finding 19, are dire. Given that respondent is responsible for the costs of probation monitoring under the order issued below, no further costs will be imposed.

ORDER

Pharmacy technician registration number TCH 56093, issued to respondent Bertha A. Sanchez, is hereby 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 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 pharmacy technician registration 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 any 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 her 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 6813 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 her employer(s), and the name(s) and telephone number(s) of all of her 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) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6813, 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 6813, 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 6813, 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 6813, 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 shall include any full-time, part-time, temporary, relief service or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician registration 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. 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.

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

If respondent's pharmacy technician registration expires or is canceled 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 registration shall be subject to all terms and conditions of this probation not previously satisfied.

9. Registration Surrender While on Probation. Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish her pharmacy technician registration, including any indicia of registration issued by the board, along with a request to surrender the registration. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, 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 registration history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician registration, including any indicia of registration 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 or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license or registration sought as of the date the application for that registration or license is submitted to the board, including any outstanding costs.

10. Certification to Prior 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.

11. 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 number of hours per calendar month, as determined by the board. 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 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 36 months. The board or its designee may post a notice of the extended probation period on its website.

12. 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.

13. Completion of Probation. Upon written notice by the board or its designee indicating successful completion of probation, respondent's pharmacy technician registration will be fully restored.

DATE: May 21, 2020

DocuSigned by:
Cindy F. Forman
CINDY F. FORMAN

Administrative Law Judge
Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
4 State Bar No. 225325
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6322
6 Facsimile: (916) 731-2126
Attorneys for Complainant
7

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. 6813

13 **BERTHA A. SANCHEZ**
15336 Lassen Dr.
14 Adelanto, CA 92301

ACCUSATION

15 **Pharmacy Technician Registration No.**
TCH 56093

16 Respondent.
17

18
19 **PARTIES**

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

23 2. On or about April 20, 2004, the Board issued Pharmacy Technician Registration
24 Number TCH 56093 to Bertha A. Sanchez (Respondent). The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 December 31, 2019, unless renewed.

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3. This Accusation is brought before the Board, under the authority of the following

4. Section 4300 of the Code provides, in pertinent part, that every license issued by the

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.

12

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or

7. 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:

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(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.

24

(I) 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

1 inquire into the circumstances surrounding the commission of the crime, in order to
2 fix the degree of discipline or, in the case of a conviction not involving controlled
3 substances or dangerous drugs, to determine if the conviction is of an offense
4 substantially related to the qualifications, functions, and duties of a licensee under this
5 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
6 contendere is deemed to be a conviction within the meaning of this provision. The
7 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.

8 **REGULATORY PROVISIONS**

9 8. California Code of Regulations, title 16, section 1770, states:

10 For the purpose of denial, suspension, or revocation of a personal or facility
11 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
12 Professions Code, a crime or act shall be considered substantially related to the
13 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.

14 **COST RECOVERY**

15 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
20 included in a stipulated settlement.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(June 27, 2019 Criminal Conviction - DUI on February 16, 2019)**

23 10. Respondent is subject to disciplinary action under Code sections 490 and 4301(I), in
24 conjunction with California Code of Regulations, title 16, section 1770, in that on or about June
25 27, 2019, in a criminal proceeding entitled *The People of the State of California vs. Bertha Alicia*
26 *Sanchez*, in San Bernardino County Superior Court, Case No. MWV19008981, Respondent was
27 convicted of violating Vehicle Code section 23152(a) (driving while under the influence of
28 alcohol), a misdemeanor; and violating Vehicle Code section 23152(b) (driving with a .08%

1 blood alcohol content), a misdemeanor. Respondent was sentenced to serve 30 days in jail,
2 placed on three years probation, ordered to complete a nine month DUI program, and pay fines
3 and fees.

4 The circumstances underlying the conviction are that on or about February 16, 2019, a
5 Montclair Police Department officer responded to a drunk driver call involving Respondent who
6 had collided with a light pole. Upon speaking to Respondent, the officer noticed an odor of an
7 alcoholic beverage coming from her breath, slurred speech, water and bloodshot eyes, and an
8 unsteady balance. Respondent admitted to driving the vehicle. A record check revealed
9 Respondent's driver's license was expired. Respondent submitted to a blood sample that revealed
10 a blood alcohol concentration of 0.271%.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Dangerous Use of Alcohol)**

13 11. Respondent is subject to disciplinary action under Code section 4301(h), on the
14 grounds of unprofessional conduct, in that on or about February 16, 2019, Respondent used
15 alcohol in a manner dangerous to herself and others, as alleged above in paragraph 10.

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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 56093, issued to Bertha A. Sanchez;
2. Ordering Bertha A. Sanchez 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: October 31, 2019



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

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