

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

In the Matter of the Accusation Against:

NANCY AVILA,

Pharmacy Technician License No. TCH 119934;

Respondent

Agency Case No. 6890

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order 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 September 30, 2020.

It is so ORDERED on August 31, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

By

Greg Lippe
Board President

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 6890

14 **NANCY AVILA**
710 Brundage Lane, #36
15 **Bakersfield, CA 93304**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Pharmacy Technician License No. TCH**
119934

17
18 Respondent.

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Xavier Becerra, Attorney General of the State of California, by Elaine Yan, Deputy Attorney
25 General.

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2. Respondent Nancy Avila (Respondent) is represented in this proceeding by attorney Negin Yamini, whose address is 5670 Wilshire Blvd., Suite 1837, Los Angeles, CA 90036.

3. On or about April 2, 2012, the Board issued Pharmacy Technician License No. TCH 119934 to Nancy Avila (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 6890, and will expire on September 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 6890 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 25, 2020. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 6890 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 6890. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 6890.

4 10. Respondent agrees that her Pharmacy Technician License is subject to discipline and
5 she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
6 below.

7 **CONTINGENCY**

8 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
9 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
10 communicate directly with the Board regarding this stipulation and settlement, without notice to
11 or participation by Respondent or her counsel. By signing the stipulation, Respondent
12 understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation
13 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
14 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
15 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
16 and the Board shall not be disqualified from further action by having considered this matter.

17 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
18 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
19 signatures thereto, shall have the same force and effect as the originals.

20 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
22 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
23 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
24 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
25 writing executed by an authorized representative of each of the parties.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 119934 issued to Respondent Nancy Avila is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) 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,

1 probation shall be automatically extended until such time as the final report is made and accepted
2 by the board.

3 **3. Interview with the Board**

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

9 **4. Cooperate with Board Staff**

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

16 **5. Reporting of Employment and Notice to Employers**

17 During the period of probation, respondent shall notify all present and prospective
18 employers of the decision in case number 6890 and the terms, conditions and restrictions imposed
19 on respondent by the decision, as follows:

20 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
21 undertaking any new employment, respondent shall report to the board in writing the name,
22 physical address, and mailing address of each of Female employer(s), and the name(s) and
23 telephone number(s) of all of Female direct supervisor(s), as well as any pharmacist(s)-in- charge,
24 designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s)
25 and the work schedule, if known. Respondent shall also include the reason(s) for leaving the
26 prior employment. Respondent shall sign and return to the board a written consent authorizing
27 the board or its designee to communicate with all of respondent's employer(s) and supervisor(s),
28 and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,

1 concerning respondent's work status, performance, and monitoring. Failure to comply with the
2 requirements or deadlines of this condition shall be considered a violation of probation.

3 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
4 respondent undertaking any new employment, respondent shall cause (a) Female direct
5 supervisor, (b) Female pharmacist-in-charge, designated representative-in-charge, responsible
6 manager, or other compliance supervisor, and (c) the owner or owner representative of Female
7 employer, to report to the board in writing acknowledging that the listed individual(s) has/have
8 read the decision in case number 6890, and terms and conditions imposed thereby. If one person
9 serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It
10 shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely
11 submitted to the board. In the event of a change in the person(s) serving the role(s) described in
12 (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the
13 role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that
14 he or she has read the decision in case number 6890, and the terms and conditions imposed
15 thereby.

16 If respondent works for or is employed by or through an employment service, respondent
17 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
18 of the decision in case number 6890, and the terms and conditions imposed thereby in advance of
19 respondent commencing work at such licensed entity. A record of this notification must be
20 provided to the board upon request.

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

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

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

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

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

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

13 **7. Reimbursement of Board Costs**

14 As a condition precedent to successful completion of probation, respondent shall pay to the
15 board its costs of investigation and prosecution in the amount of \$1,775.63. Respondent shall
16 make said payments as follows:

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

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

23 **8. Probation Monitoring Costs**

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

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1 **9. Status of License**

2 Respondent shall, at all times while on probation, maintain an active, current Pharmacy
3 Technician License with the board, including any period during which suspension or probation is
4 tolled. Failure to maintain an active, current Pharmacy Technician License shall be considered a
5 violation of probation.

6 If respondent's Pharmacy Technician License expires or is cancelled by operation of law or
7 otherwise at any time during the period of probation, including any extensions thereof due to
8 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
9 terms and conditions of this probation not previously satisfied.

10 **10. License Surrender While on Probation/Suspension**

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

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

26 **11. Certification Prior to Resuming Work**

27 Respondent shall have one year from the effective date of this decision to achieve
28 certification pursuant to Business and Professions Code section 4202, subdivision (a)(4). If

1 Respondent fails to obtain certification within one year after the effective date of this decision,
2 she will be suspended, and shall not work as a pharmacy technician, until she has been certified as
3 defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof
4 of certification to the board, and has been notified by the board or its designee that she may begin
5 work. Failure to achieve certification within one year of the effective date shall be considered a
6 violation of probation.

7 During suspension, respondent shall not enter any pharmacy area or any portion of any
8 other board licensed premises of a wholesaler, third-party logistics provider, veterinary food
9 animal drug retailer or any other distributor of drugs which is licensed by the board, or any
10 manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled
11 substances are maintained.

12 During suspension, respondent shall not do any act involving drug selection, selection of
13 stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or
14 assist any licensee of the board. Respondent shall not have access to or control the ordering,
15 distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or
16 controlled substances.

17 During suspension, respondent shall not engage in any activity that requires licensure as a
18 pharmacy technician. Respondent shall not direct or control any aspect of the practice of
19 pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or
20 dangerous devices, or controlled substances.

21 Failure to comply with any such suspension shall be considered a violation of probation.

22 12. Practice Requirement – Extension of Probation

23 Except during periods of suspension, respondent shall, at all times while on probation, be
24 employed as a Pharmacy Technician in California for a minimum of 80 hours per calendar month.
25 Any month during which this minimum is not met shall extend the period of probation by one
26 month. During any such period of insufficient employment, respondent must nonetheless comply
27 with all terms and conditions of probation, unless respondent receives a waiver in writing from
28 the board or its designee.

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

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

14 13. Violation of Probation

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

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

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1 **14. Completion of Probation**

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

4 **15. Drug and Alcohol Testing**

5 Respondent, at her own expense, shall participate in testing as directed by the board or its
6 designee for the detection of alcohol, controlled substances, and dangerous drugs and/or
7 dangerous devices. Testing protocols may include biological fluid testing (urine, blood),
8 breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its
9 designee. All testing must be pursuant to an observed testing protocol, unless respondent is
10 informed otherwise in writing by the board or its designee. Respondent may be required to
11 participate in testing for the entire probation period and frequency of testing will be determined
12 by the board or its designee.

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

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

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

1 by respondent. During the period of absence of the area, respondent shall commence testing
2 protocols with the alternate vendor, including required daily contacts with the testing vendor to
3 determine if testing is required, and required testing. Any failure to timely seek or receive
4 approval from the board or its designee, or to timely enroll and register with, timely commence
5 testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be
6 considered a violation of probation.

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

12 Any of the following shall be considered a violation of probation and shall result in
13 respondent being immediately suspended from practice as a Pharmacy Technician until notified
14 by the board in writing that she may resume practice: failure to timely complete all of the steps
15 required for enrollment/registration with the drug testing vendor, including making arrangements
16 for payment; failure to timely commence drug testing protocols; failure to contact the drug testing
17 vendor as required to determine testing date(s); failure to test as required; failure to timely supply
18 documentation demonstrating that a detected substance was taken pursuant to a legitimate
19 prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or
20 of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the
21 detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In
22 the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a
23 controlled substance or dangerous drug absent documentation that the detected substance was
24 taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee
25 shall inform respondent of the suspension and inform her to immediately leave work, and shall
26 notify respondent's employer(s) and work site monitor(s) of the suspension.

27 During any such suspension, respondent shall not enter any pharmacy area or any portion of
28 the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug

1 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
2 any area where dangerous drugs and/or dangerous devices or controlled substances are
3 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
4 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
5 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
6 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
7 dangerous devices and controlled substances.

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

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

15 **16. Notification of Departure**

16 Prior to leaving the probationary geographic area designated by the board or its designee for
17 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
18 writing of the dates of departure and return. Failure to comply with this provision shall be
19 considered a violation of probation.

20 **17. Abstain from Drugs and Alcohol**

21 Respondent shall completely abstain from the possession or use of alcohol, controlled
22 substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated
23 paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a
24 necessary part of treatment. Respondent shall ensure that she is not in the same physical location
25 as individuals who are using illicit substances even if respondent is not personally ingesting the
26 drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled
27 substances, or their associated paraphernalia for which a legitimate prescription has not been
28

1 issued as a necessary part of treatment, or any physical proximity to persons using illicit
2 substances, shall be considered a violation of probation.

3 **18. Prescription Coordination and Monitoring of Prescription Use**

4 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
5 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
6 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
7 history with the use of alcohol, illicit drugs, controlled substances, and/or dangerous drugs and
8 who will coordinate and monitor any prescriptions for respondent for dangerous drugs and/or
9 dangerous devices, controlled substances or mood-altering drugs. The approved practitioner shall
10 be provided with a copy of the board's Accusation and decision. A record of this notification
11 must be provided to the board or its designee upon request. Respondent shall sign a release
12 authorizing the practitioner to communicate with the board or its designee about respondent's
13 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist
14 shall report to the board on a quarterly basis for the duration of probation regarding respondent's
15 compliance with this condition. If any substances considered addictive have been prescribed, the
16 report shall identify a program for the time limited use of any such substances. The board or its
17 designee may require that the single coordinating physician, nurse practitioner, physician assistant
18 or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.
19 Should respondent, for any reason, cease supervision by the approved practitioner, respondent
20 shall notify the board or its designee immediately and, within thirty (30) days of ceasing
21 supervision, submit the name of a replacement physician, nurse practitioner, physician assistant,
22 or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to
23 timely submit the selected practitioner or replacement practitioner to the board or its designee for
24 approval, or to ensure the required quarterly reporting thereby, shall be considered a violation of
25 probation.

26 If at any time an approved practitioner determines that respondent is unable to practice
27 safely or independently as a Pharmacy Technician, the practitioner shall notify the board or its
28 designee immediately by telephone and follow up by written letter within three (3) working days.

1 Upon notification from the board or its designee of this determination, respondent shall be
2 automatically suspended and shall not resume practice as a Pharmacy Technician until notified by
3 the board or its designee that practice may be resumed.

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

14 During any suspension, respondent shall not engage in any activity that requires the
15 professional judgment and/or licensure as a Pharmacy Technician. Respondent shall not direct or
16 control any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling,
17 or retailing of dangerous drugs and/or dangerous devices or controlled substances.

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

20 **19. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

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

1 Where respondent is enrolled in the PRP, participation as required in a recovery group
2 meeting approved by the PRP shall be sufficient for satisfaction of this requirement. Any
3 deviation from participation requirements for the PRP-approved group shall be considered a
4 violation of probation.

5 **20. Work Site Monitor**

6 Within ten (10) days of the effective date of this decision, respondent shall identify a work
7 site monitor, for prior approval by the board or its designee, who shall be responsible for
8 supervising respondent during working hours. Respondent shall be responsible for ensuring that
9 the work site monitor reports in writing to the board monthly or on another schedule as directed
10 by the board or its designee. Should the designated work site monitor suspect at any time during
11 the probationary period that respondent has abused alcohol or drugs, he or she shall notify the
12 board immediately.

13 In the event of suspected abuse, the monitor shall make at least oral notification within one
14 (1) business day of the occurrence, and shall be followed by written notification within two (2)
15 business days of the occurrence. If, for any reason, including change of employment, respondent
16 is no longer able to be monitored by the approved work site monitor, within ten (10) days
17 respondent shall designate a new work site monitor for approval by the board or its designee.
18 Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure
19 monthly reports are submitted to the board by the monitor, shall be considered a violation of
20 probation.

21 Within thirty (30) days of being approved by the board or its designee, the work site
22 monitor shall sign an affirmation that he or she has reviewed the terms and conditions of
23 respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at
24 least:

- 25 1) Have regular face-to-face contact with respondent in the work environment, at least
26 once per week or with greater frequency if required by the board or its designee;
- 27 2) Interview other staff in the office regarding respondent's behavior, if applicable; and
- 28 3) Review respondent's work attendance.

1 The written reports submitted to the board or its designee by the work site monitor shall
2 include at least the following information: respondent's name and license number; the monitor's
3 name, license number (if applicable) and work site location; the date(s) the monitor had face-to-
4 face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on
5 any changes in respondent's behavior or personal habits; notes on any indicators that may lead to
6 substance abuse; and the work site monitor's signature.

7 Respondent shall complete the required consent forms and sign an agreement with the work
8 site monitor and the board to allow the board to communicate with the work site monitor.

9 **21. No Ownership or Management of Licensed Premises**

10 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,
11 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
12 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
13 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
14 days following the effective date of this decision and shall immediately thereafter provide written
15 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
16 documentation thereof shall be considered a violation of probation.

17 **ACCEPTANCE**

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Negin Yamini. I understand the stipulation and the effect it will
20 have on my Pharmacy Technician License. I enter into this Stipulated Settlement and Disciplinary
21 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
22 of the Board of Pharmacy.

23
24 DATED: _____
25 NANCY AVILA
26 Respondent

26 ///

27 ///

28 ///

1 The written reports submitted to the board or its designee by the work site monitor shall
2 include at least the following information: respondent's name and license number; the monitor's
3 name, license number (if applicable) and work site location; the date(s) the monitor had face-to-
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21 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
22 of the Board of Pharmacy.

23
24 DATED: Jul 22, 2020

25 
NANCY AVILA
Respondent

26 ///

27 ///

28 ///

1 I have read and fully discussed with Respondent Nancy Avila the terms and conditions and
2 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
3 form and content.

4 DATED: _____

NEGIN YAMINI
Attorney for Respondent

6 **ENDORSEMENT**

7 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
8 submitted for consideration by the Board of Pharmacy.

9 DATED: _____

Respectfully submitted,

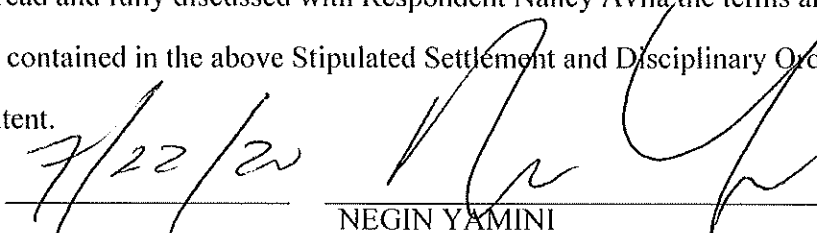
XAVIER BECERRA
Attorney General of California
SHAWN P. COOK
Supervising Deputy Attorney General

ELAINE YAN
Deputy Attorney General
Attorneys for Complainant

19 LA2020500489
20 63370040.docx

1 I have read and fully discussed with Respondent Nancy Avila the terms and conditions and
2 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
3 form and content.

4 DATED: 7/22/20


NEGIN YAMINI
Attorney for Respondent

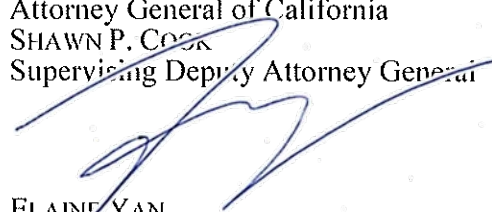
6 **ENDORSEMENT**

7 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
8 submitted for consideration by the Board of Pharmacy.

9 DATED: 07/22/2020

Respectfully submitted,

11 XAVIER BECERRA
Attorney General of California
12 SHAWN P. COOK
Supervising Deputy Attorney General

13 
14 ELAINE YAN
15 Deputy Attorney General
16 *Attorneys for Complainant*

17
18
19 LA2020500489
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Exhibit A

Accusation No. 6890

1 XAVIER BECERRA
Attorney General of California
2 CARL W. SONNE
Senior Assistant Attorney General
3 SHAWN P. COOK
Supervising Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6291
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. 6890

13 **NANCY AVILA**
14 **710 Brundage Lane, #36**
Bakersfield, CA 93304

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **119934**

Respondent.

17
18 **PARTIES**

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

21 2. On or about April 2, 2012, the Board of Pharmacy (Board) issued Pharmacy
22 Technician License Number TCH 119934 to Nancy Avila (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on September 30, 2021, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Section 4300, subdivision (a), states, “[e]very license issued may be suspended or
2 revoked.”

3 5. Section 4300.1 of the Code states:

4 The expiration, cancellation, forfeiture, or suspension of a board-issued license
5 by operation of law or by order or decision of the board or a court of law, the
6 placement of a license on a retired status, or the voluntary surrender of a license by a
7 licensee shall not deprive the board of jurisdiction to commence or proceed with any
8 investigation of, or action or disciplinary proceeding against, the licensee or to render
9 a decision suspending or revoking the license.

10 **STATUTORY PROVISIONS**

11 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
12 revoke a license on the ground that the licensee has been convicted of a crime substantially
13 related to the qualifications, functions, or duties of the business or profession for which the
14 license was issued.

15 7. Section 493 of the Code states:

16 “Notwithstanding any other provisions of law, in a proceeding conducted by a board within
17 the department pursuant to law to deny an application for a license or to suspend or revoke a
18 license or otherwise take disciplinary action against a person who holds a license, upon the
19 ground that the applicant or the licensee has been convicted of a crime substantially related to the
20 qualifications, functions, and duties of the licensee in question, the record of conviction of a
21 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
22 and the board may inquire into the circumstances surrounding the commission of the crime in
23 order to fix the degree of discipline or to determine if the conviction is substantially related to the
24 qualifications, functions, and duties of the licensee in question. As used in this section, ‘license’
25 includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’”

26 8. Section 4301 states in pertinent part:

27 “The board shall take action against any holder of a license who is guilty of unprofessional
28 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

....

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

6

7 “(j) The violation of any of the statutes of this state, of any other state, or of the United
8 States regulating controlled substances and dangerous drugs.

9 (k) The conviction of more than one misdemeanor or any felony involving the use,
10 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
11 combination of those substances.”

12

13 “(l) The conviction of a crime substantially related to the qualifications, functions, and
14 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
15 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
16 substances or of a violation of the statutes of this state regulating controlled substances or
17 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
18 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
19 The board may inquire into the circumstances surrounding the commission of the crime, in order
20 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
21 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
22 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
23 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
24 of this provision. The board may take action when the time for appeal has elapsed, or the
25 judgment of conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
27 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

28 ///

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 **REGULATORY PROVISIONS**

4 9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

11 **COST RECOVERY**

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantial Relationship)**

20 11. Respondent is subject to disciplinary action under Code sections 490 and 4301,
21 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section
22 1770, on the grounds of unprofessional conduct that Respondent was convicted of a substantially
23 related crime, as follows:

24 a. On or about November 11, 2018, Respondent pled no contest and was convicted of
25 one misdemeanor count of violating Vehicle Code sections 23152, subdivision (A) and 23578
26 [driving under the influence of alcohol with an enhancement] in the criminal proceeding entitled
27 *The People of the State of California v. Nancy Avila* (Super. Ct. Kern County, 2018, No.
28

1 BM928447A). Respondent was sentenced to serve 55 days in jail, ordered to enroll in DUI
2 school, and placed on three years of probation, with terms and conditions.

3 b. The circumstances surrounding the conviction are that on or about October 30, 2018,
4 Respondent was involved in a car collision with two other parked vehicles. Respondent admitted
5 to drinking three beers. In addition, the officer observed her to have red and watery eyes, slurred
6 speech, an unsteady gait, and a strong odor of alcohol on her breath. Respondent submitted to a
7 chemical breath test resulting in a B.A.C. of 0.193%.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol)**

10 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
11 in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
12 unprofessional conduct, in that Respondent used alcoholic beverages to the extent or in a manner
13 as to be dangerous or injurious to herself, another person, or the public and had a BAC of 0.193%
14 as alleged above in paragraph 11.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Multiple Convictions Involving Alcohol)**

17 13. Respondent is subject to disciplinary action under Code section 4301(k), in
18 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
19 unprofessional conduct, in that Respondent was convicted of multiple misdemeanors involving
20 alcohol as alleged above in paragraph 11 and below in paragraph 14.

21 **DISCIPLINARY CONSIDERATIONS**

22 14. In order to determine the degree of discipline, if any to be imposed on Respondent,
23 Complainant alleges that on or about October 30, 2015, the Board issued Citation and Fine No.
24 CI 2014 65804 to Respondent for violating section 4301, subdivision (h) [dangerous use of drug
25 and/or alcoholic beverages] and section 4301, subdivision (l) [conviction of a substantially related
26 crime], resulting the issuance of a \$700.00 fine. Respondent has complied with the Citation, as
27 set forth below:

28 ///

1 a. On or about June 15, 2015, Respondent was convicted of one misdemeanor count of
2 violating Vehicle Code 23152, subdivision (A) [driving while under the influence of alcohol] and
3 one misdemeanor count of violating Vehicle Code section 20002, subdivision (A) [hit and run:
4 property damage] in a criminal proceeding entitled *The People of the State of California v. Nancy*
5 *Avila* (Super Ct. Kern County, 2015, No. BM864170A). The court sentenced Respondent to serve
6 10 days in jail and placed her on three years of probation, with terms and conditions.

7 b. The circumstances surrounding the conviction are that on or about May 23, 2015,
8 Respondent drove a motor vehicle while under the influence of alcohol and was involved in a hit
9 and run traffic collision involving property damage.

10 **PRAYER**


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

13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 119934,
14 issued to Nancy Avila;

15 2. Ordering Nancy Avila to pay the Board of Pharmacy the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3; and,

18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: March 19, 2020



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