

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

In the Matter of the Accusation Against:

ARAM AVAKYAN,

Original Intern Pharmacist Registration No. INT. 39095,

Respondent.

Agency Case No. 7200

OAH No. 2022010605

DECISION AND ORDER

The attached Proposed Decision 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 28, 2022.

It is so ORDERED on August 29, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.
Board President

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PROPOSED DECISION

Naki Margolis, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video conference on May 10 and 12, 2022.

Elaine Yan, Deputy Attorney General, and Alexandra Chavez, Certified Law Student, represented Anne Sodergren (complainant).

Scott J. Harris, Attorney at Law, represented Aram Avakyan (respondent).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 12, 2022.

SUMMARY

Complainant seeks to discipline respondent's intern pharmacist license based on allegations that he suffered a criminal conviction substantially related to the qualifications, functions, and duties of an intern pharmacist. Respondent did not dispute that he suffered the conviction, but presented evidence in mitigation and rehabilitation. For the reasons set forth below, cause for discipline exists and probation for three years is appropriate.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation in her official capacity as Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.
2. On October 14, 2016, the Board issued Original Intern Pharmacist Registration number INT 39095 to respondent. The registration is in effect until May 31, 2022. The expiration of a license does not deprive the Board of jurisdiction to discipline the license. (Bus. & Prof. Code, § 4300.1.)

Factual Findings

3. Respondent is 34 years old. From August 2016 to May 2021, respondent attended the Keck Graduate Institute School of Pharmacy, where he obtained his Doctor of Pharmacy in May 2021. In pharmacy school, respondent worked as an intern pharmacist at various community pharmacies and hospitals in clinical rotations. From May 2021 to February 2022, respondent worked as a graduate intern pharmacist at a

community pharmacy. Since February 2022, respondent has worked as a medical billing specialist.

CRIMINAL CONVICTION AND UNDERLYING CIRCUMSTANCES

4. On August 31, 2021, in the Superior Court of the State of California, County of Los Angeles, in case number GA108710, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23153, subdivision (f) (driving while under the influence of a drug, and causing bodily injury to a person other than the driver), a misdemeanor. The Court suspended imposition of sentence, ordered respondent to serve one day in jail with credit for one day served, and placed respondent on summary probation for three years on terms and conditions that included payment of fines and fees, and completion of a three-month, first-offender alcohol and other drug education and counseling program (court-ordered treatment program). On September 15, 2021, respondent paid in full all fines and fees. On December 23, 2021, respondent completed the court-ordered treatment program. Respondent has no prior criminal history.

5. The facts and circumstances surrounding the conviction are as follows. On the afternoon of July 23, 2020, respondent was driving a vehicle which collided with another vehicle on a freeway, and the other vehicle flipped over. Respondent was not injured, but the passenger in the other vehicle broke her arm. Both vehicles had major physical damage. Police officers arrived at the scene around 2:38 p.m. and noticed respondent's eyes were red and droopy, his gait was unsteady, and his speech was slow and slurred. Respondent told officers he was coming from Claremont and headed home to Pasadena, driving 70 miles per hour in the HOV lane on the freeway, when a truck hit him from the side and he hit the truck. Respondent said he did not remember anything after the initial impact with the truck.

6. Officers asked respondent if he had consumed any alcohol, medication, or drugs before driving, and if he felt their effects prior to driving, and respondent said no. Officers then administered field sobriety tests, which respondent was unable to complete. Respondent performed a preliminary alcohol screening breath test, which was negative for ethyl alcohol. Officers noticed respondent was fidgety and red-faced, and that his head bobbed from side to side when he was seated. Concluding that respondent was driving under the influence of drugs, the officers arrested respondent. Respondent would not agree to submit to a blood test, and a search warrant was obtained for a blood draw. On the way to the hospital, an officer noticed respondent was nodding off while the officer was talking with him. Respondent was then transported to the Pasadena police department where he was taken into custody.

7. According to a laboratory examination report issued by the Los Angeles County Sheriff's Department Scientific Services Bureau on October 7, 2020, respondent's blood sample tested positive for amphetamines, benzodiazepines, and cannabinoids.

8. At hearing, respondent asserted he took two prescription medications and used no other drugs on the day of the incident. Respondent took Lorazepam at 3:00 a.m., and Adderall at 7:30 a.m. or 8:00 a.m. Respondent asserted he used CBD over a week before the incident. On the day of the incident, respondent attended his clinical rotational hours, gave a presentation at a pharmacy around 11:30 a.m., and got into his car around 1:00 p.m., but he did not feel any side effects from the drugs before driving. Following the accident, respondent felt the effects of the drugs. Feeling shocked, scared and confused, respondent was not comfortable agreeing to a blood test requested by the police. At hearing, respondent asserted he had not meant to be uncooperative or to have misrepresented anything to the police. When police officers

asked if respondent had consumed any drugs before driving, respondent said no because he had taken his medications many hours before driving.

9. At hearing, respondent asserted he had an adverse reaction to the prescription medicines on the day of the incident. Respondent was familiar with the side effects of the medications from pharmacy school and because his psychiatrist, Dr. Gevorkian, had discussed the side effects with respondent when the medicines were prescribed.

THE BOARD'S INSPECTOR: DR. SAMARI

10. Dr. Simin Samari, a pharmacist and Inspector employed by the Board, testified that respondent, as an intern pharmacist, should have known about the side effects of the drugs he took on the day of the incident. In her opinion, respondent showed poor judgement in driving after taking these drugs. Dr. Samari explained that an intern pharmacist has the same responsibilities as a pharmacist. Pharmacists are responsible for dispensing medication to patients. A pharmacist must exercise good judgment, and be responsible, alert, and professional, to avoid mistakes that could harm patients.

11. Dr. Samari testified that the drugs listed in the laboratory report (amphetamines, benzodiazepines, and cannabinoids) are controlled substances. (Ex. 5.) Adderall contains amphetamines. Amphetamines are a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (d) (1), which are highly prone to be addictive and abused. Amphetamines are a central nervous system stimulant; they help with concentration and focus, and provide a sense of euphoria and high energy.

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12. Lorazepam is a benzodiazepine, which is a depressant and a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d), with a potential for abuse. Lorazepam is prescribed for anxiety and insomnia. It is dispensed with a warning label that indicates it will cause drowsiness, and that the patient should avoid driving and operating heavy machinery. If respondent took Lorazepam approximately 12 hours before the incident, most of the side effects would have worn off. However, Dr. Samari testified, someone who was just seven days into a new prescription may have greater side effects than anticipated. In Dr. Samari's opinion, it may take a few days to a few weeks to gain tolerance to Lorazepam. Dr. Samari admitted it was possible that respondent's DUI was just the result of a negative reaction to lawfully prescribed medications.

13. According to Dr. Samari, cannabinoids are a Schedule I, federally-controlled substance, which are prone to abuse. CBD and THC are the two major types of cannabinoids found in cannabis. THC is a hallucinogen, which produces euphoria. CBD is used for relaxation and for pain treatment. Dr. Samari testified that THC as a hallucinogenic substance is classified as Schedule I controlled substances under Health and Safety Code section 11054, subdivision (d). Dr. Samari did not testify that CBD is a hallucinogenic substance. The side effects of cannabis usage are red and droopy eyes and sedation. If cannabis is taken with Lorazepam, it increases the symptoms of fatigue and sedation. Dr. Samari admitted that the positive laboratory test result for cannabinoids might be based on residual cannabis in respondent's body days after any usage by him.

14. Dr. Samari's credibility was hurt when she gave opinions that were beyond the scope of allegations in the Accusation and unsupported by evidence. First, Dr. Samari testified about the risk of an intern pharmacist's diversion of drugs due to a

substance abuse problem or an addiction. The Accusation contains no allegations of diversion of drugs by respondent. Second, Dr. Samari testified that pharmacists should not use cannabis because it is a highly addictive Schedule I drug; she did not discuss the basis for finding cannabis highly addictive or the basis for the State of California legalizing its use. Even more to the point, respondent testified that he used CBD, not THC, and Dr. Samari admitted that she knows of no evidence that respondent is addicted to cannabis or to any drug or has a substance abuse problem. Third, Dr. Samari testified that an intern pharmacist should not work under the influence of drugs because of the potential for poor judgment and mistakes. However, Dr. Samari admitted there was no evidence that respondent had worked under the influence of drugs as an intern pharmacist.

15. On the date of the incident, respondent took two prescription medications, which are dangerous drugs under Business and Professions Code section 4022, in that they are drugs unsafe for use without a prescription. (Factual Findings 4 through 12.) Over a week before the incident, respondent used CBD. Dr. Samari did not testify that CBD is a hallucinogen. Complainant failed to establish by a preponderance of the evidence that the CBD, used by respondent over a week before the incident, was a dangerous drug under Business and Professions Code section 4022. (Factual Findings 7, 8 and 13.)

PSYCHIATRIST'S OPINION

16. In his letter dated March 10, 2022, Dr. Gevorkian, a psychiatrist, stated he had been treating respondent since July 2020 for panic attacks, insomnia, and difficulty concentrating, by providing cognitive behavioral therapy sessions and medication. On July 16, 2020, Dr. Gevorkian first prescribed Ativan and Adderall to respondent. At that time, in Dr. Gevorkian's opinion, respondent did not display any symptoms of a

substance use disorder or drug seeking behavior, and had “no history of prescription medication or illicit substance use.” (Ex. C.)

17. At the time of the incident, respondent was in the process of completing his clinical rotation hours as part of the Doctor of Pharmacy program while simultaneously being employed. In Dr. Gevorkian’s opinion, respondent’s anxiety and insomnia were exacerbated by the COVID-19 pandemic and the responsibility of driving long distances to complete his degree. Since the incident, respondent has followed Dr. Gevorkian’s treatment plan and has not displayed any signs of substance abuse. (*Ibid.*) As of the date of his letter, Dr. Gevorkian stated his intention to continue monitoring respondent’s progress as long as needed. (*Ibid.*) Although Dr. Gevorkian did not testify in person, his letter is given substantial weight due to Dr. Gevorkian’s first-hand experience in treating respondent.

CHARACTER REFERENCE LETTERS AND PERFORMANCE EVALUATIONS

18. Respondent submitted seven recent letters from those familiar with him, including from pharmacists, who attest to his good character and skills as a pharmacist. (Ex. D.) Respondent asserted he disclosed his criminal conviction and the circumstances of the incident to these seven individuals before they wrote the letters. The letters from pharmacists are given substantial weight because the pharmacists worked closely with respondent and had an opportunity to evaluate his character, professionalism, and performance. Dr. Injejikian, Pharm.D. is a pharmacy manager at a CVS Store which employed respondent from 2015 to 2019. (Ex. A, D, p. B78.) Dr. Injejikian described respondent as a leader with a solid ethical and moral foundation. In the five years he has known respondent, Dr. Injejikian has never seen any lapses in respondent’s judgment. Dr. Injejikian described respondent as reliable and responsible, with an excellent work ethic. During respondent’s employment, Dr. Injejikian entrusted

respondent with an increasing workload, ranging from administering vaccinations to managing inventory. (Ex. D, p. B78.) From 2017 to 2019, respondent worked as an intern pharmacist at Kaiser Permanente Hospital. Staff pharmacist, Wynne Do, gave respondent excellent marks, stating that respondent's "work ethic was incredible and he consistently exercised great judgment". Dr. Do never saw respondent show any questionable behavior or lack of ethics. Dr. Do stated, "there wasn't any task or duty I couldn't trust him with to oversee." (*Id.*, p. B77.)

19. As part of the pharmacy school program, respondent successfully completed clinical rotations in hospital and community pharmacies in the years 2016 to 2021. Respondent's performance evaluations are good to excellent. (Ex. G.) Respondent is described as knowledgeable, detail-oriented, and professional. (*Ibid.*) These evaluations are given substantial weight because the evaluators had an opportunity to observe respondent's performance as a pharmacy intern, and to evaluate his character.

20. Two of respondent's close friends (Arno Babakhanloe and Alexander Aleshkevich) testified at hearing and submitted character reference letters. (Ex. D, pp. B76, B82.) They described respondent as a stable, reliable, and responsible person, for whom the incident was completely out of character. They never saw respondent use any drugs or use alcohol to excess. Mr. Aleshkevich, a police officer, received specialized DUI training through the Santa Monica police department. Although he has had close contact with respondent for 13 years, Mr. Aleshkevich has never seen respondent exhibit any signs of intoxication. Respondent spoke to Mr. Babakhanloe and Mr. Aleshkevich shortly after the incident, and respondent expressed to both of them his remorse about the incident and his conduct. Mr. Aleshkevich's testimony and

letter are given substantial weight because he is a police officer with DUI training, who has known respondent for 13 years.

21. In his letter, Mr. Babakhanloe stated he has known respondent for several years, served as respondent's sponsor at Narcotics Anonymous (NA), and monitored respondent's progress in the court-ordered treatment program. (Ex. D, p. B82.) According to Mr. Babakhanloe, respondent demonstrated commitment to the court-ordered treatment program and to the principles of NA. (*Ibid.*) Mr. Babakhanloe's testimony and letter are given substantial weight as respondent's NA sponsor.

OTHER REHABILITATION EVIDENCE

22. At hearing, respondent asserted he stopped taking Lorazepam and Adderall after the incident. Respondent continues to be treated by Dr. Gevorkian. Respondent has been able to control his anxiety through exercise and natural supplements that are not mind altering. After respondent completed the court-ordered treatment program, Dr. Gevorkian recommended that respondent use the prescribed medications on an as-needed basis. At hearing, respondent asserted he last filled a prescription for these medications in January or February 2022, but he is not actively taking these medications.

23. Respondent asserted he does not use any illegal drugs and he has no substance abuse or addiction issues. Respondent also asserted he no longer uses cannabis, including CBD. Respondent testified he benefitted from his attendance at NA meetings. While he did not experience the problems those in attendance shared, he gained empathy for the plight of those suffering from drug addiction.

24. At hearing, respondent expressed remorse for his conduct in the incident. Respondent also realizes why the Board is concerned about his conduct. Although he

was aware of the side effects of his newly-prescribed medicines, having discussed them with his psychiatrist, respondent did not bother to look at the warning labels on the vials after his father picked up his prescription. Instead, he operated a motor vehicle and became involved in a serious traffic collision. Respondent displayed poor judgment and a surprising lack of interest in the practice of pharmacy by not reading the warning labels on the vials. Despite this lapse in judgment, the evidence demonstrates that respondent is well regarded as a person of good character who demonstrates good judgment, professionalism, and skill as a pharmacist. (Factual Findings 17 through 20.) Respondent has taken responsibility for his conduct in the incident and has taken steps to prevent any reoccurrence.

25. In driving after taking newly-prescribed medications, knowing of the side effects of the medications and not reading warning labels on the vials, respondent demonstrated poor judgment, and his conduct evidences present or potential unfitness to discharge the duties of an intern pharmacist.

Costs

26. The Board incurred \$8,271.25 in the form of Attorney General charges in its investigation and enforcement of this matter, which costs are reasonable. Respondent testified that his monthly income is about \$4,000 and his monthly expenses are about \$3,000. Respondent is currently living with his parents and is not paying for housing. He expects to live with his parents for one more year. Given his income and expenses, respondent asserted it would be difficult for him to pay these costs in one lump sum, but he would be able to manage a payment plan.

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LEGAL CONCLUSIONS

Legal Principles

1. Protection of the public is the highest priority for the Board in exercising its disciplinary function. (Bus. & Prof. Code, § 4001.1.)

2. As the party bringing administrative charges and seeking discipline against a licensee, complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175-176.)

3. Pharmacist licenses are professional licenses. (Bus. & Prof., § 4050; *Murphy v. E. R. Squibb & Sons, Inc.* (1985) 40 Cal.3d 672, 678-679.) To impose discipline on a professional license, complainant must prove cause for discipline by clear and convincing evidence to a reasonable certainty. (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1171 (*Sternberg*); *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of "high probability," and has been described as requiring proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; *In re Angelia P.* (1981) 28 Cal.3d 908, 919.) Therefore, complainant must prove by clear and convincing evidence that disciplining respondent's license is warranted. (*Sternberg, supra*, 239 Cal.App.4th at p. 1171.)

4. The Board may suspend or revoke an intern pharmacist license on the ground that that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of an intern pharmacist. (Bus. & Prof. Code, § 490.)

The Board shall take disciplinary action against the holder of a license who is guilty of unprofessional conduct. (Bus. & Prof. Code, § 4301.) Unprofessional conduct includes the conviction of a crime substantially related to the qualifications, functions, and duties of an intern pharmacist. (Bus. & Prof. Code, § 4301, subd. (j).) Unprofessional conduct also includes the use of any dangerous drug to the extent or in the manner as to be dangerous or injurious to the licensee or to the public. (Bus. & Prof. Code, § 4301, subd. (h).)

5. A crime is substantially related to the qualifications, functions or duties of an intern pharmacist where to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. (CCR, § 1770.) A substantially related crime includes a conviction for driving under the influence of drugs or alcohol. (CCR, section 1770, subd. (c) (5).) Respondent was convicted of the crime of driving under the influence of drugs causing bodily injury to a person other than the driver. (Veh. Code, § 23153, subd. (f).) Without regard for the public's safety, respondent failed to review the warning labels on vials for his newly-prescribed medicine, and operated a motor vehicle under the influence of drugs, colliding with another vehicle, and causing bodily injury to the passenger in the other vehicle. Respondent's crime qualifies as a substantially related crime, which constitutes grounds to revoke or suspend his license under Business and Professions Code sections 490 and 4301. Respondent also used dangerous drugs in a manner injurious to the public, which constitutes grounds to revoke or suspend his license under Business and Professions Code sections 490 and 4301.

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Cause for Discipline

6. Grounds exist to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code sections 490 and 4301, subdivision (j), in conjunction with CCR, section 1770, in that he suffered a conviction for a crime substantially related to the qualifications, functions and duties of an intern pharmacist. (Factual Findings 4 through 12, 15, and 23.)

7. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (h), by virtue of respondent's use of dangerous drugs to the extent or in a manner as to be dangerous or injurious to himself, another person, or to the public. (Factual Findings 4 through 13, 15, and 23.)

Costs

8. Business and Professions Code section 125.3 provides that a licensee found to have committed a violation of an applicable licensing act shall pay the reasonable costs of the investigation and enforcement of the case. As set forth in Factual Finding 24, that amount is \$8,271.25.

9. The Board must evaluate several factors to ensure that the cost recovery provision does not deter individuals from exercising their right to a hearing.

(Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, 45)

(Zuckerman). The Board must not assess full costs where it would unfairly penalize a respondent who has committed some misconduct but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable

challenge; the Board must consider a respondent's ability to pay; and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

10. Applying the *Zuckerman* criteria, respondent used the hearing process to obtain a reduction in the severity of the penalty, and had a good faith belief in the merits of his position. Respondent also presented evidence of his income and expenses to show that payment would be a burden. Therefore, a reduction in the total costs of investigation and enforcement by one third is granted.

11. Cause exists, pursuant to Business and Professions Code section 125.3, to order Respondent to pay the Board's costs of investigation and enforcement in this matter, in the sum of \$5,514.17. (Factual Finding 24 and Legal Conclusions 8 through 10.)

Disposition

12. Because cause for discipline was established in this case, the level of discipline to be imposed on respondent must be determined. In reaching a decision on the appropriate level of discipline, the Board must consider the Disciplinary Guidelines, A Manual of Disciplinary Guidelines and Model Disciplinary Orders [Rev. 2/2017] (Guidelines). (CCR, § 1760.)

13. The Guidelines list a number of factors that should be considered. The factors relevant to this matter are: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record; prior warnings (including citations, letters of admonishment, and correction notices); number and/or variety of current violations; nature and severity of the acts under consideration; aggravating

evidence; mitigating evidence; rehabilitation evidence; time passed since the acts; compliance with terms of any criminal probation; and overall criminal record.

(Guidelines, p.3.)

14. The Guidelines also establish four categories of violations, ranging from the least serious, Category I, to the most serious, Category IV.

15. Category III violations include violations involving most criminal convictions involving alcohol, dangerous drugs and/or controlled substances. (Guidelines, p. 7.) The minimum recommended discipline for a Category III violation is revocation stayed with three to five years' probation, while the maximum discipline is revocation. (*Ibid.*) Five years' probation is appropriate in cases involving self-administration or diversion of controlled substances or dangerous drugs and/or dangerous devices, or abusive use of alcohol, none of which is present in this case.

16. All evidence submitted in mitigation and rehabilitation, as well as that submitted in aggravation, has been considered in light of the Guidelines and criteria for rehabilitation (CCR, § 1769). Respondent's actions on July 23, 2020, were very serious, resulting in actual harm to the public, and occurred in the relatively recent past. Respondent's act of driving after taking prescription medications demonstrated poor judgment. Respondent was aware of the possible side effects of the medications he took.

17. Nevertheless, as serious as the incident is, it represents a single, isolated instance of aberrant behavior. Respondent accepted responsibility for his behavior and has taken steps to prevent it occurring ever again. Respondent has complied with all terms of probation to date. Respondent is also under the care of a psychiatrist to manage respondent's anxiety, insomnia, and concentration issues. The evidence

established that respondent does not abuse drugs, and the incident, and the potential impact it may have on his license, had such an impact on him that he has further limited his consumption of prescription medication in order to avoid a repetition of a DUI incident. Respondent is well regarded by friends and coworkers, and he has demonstrated his skill and professionalism as a pharmacist during his clinical rotations.

18. Under the Guidelines, respondent's conviction is a Category III violation, which calls for a minimum of three years' probation to a maximum of revocation. Here, three years' probation is deemed sufficient to protect the public.

ORDER

License number INT 39095, issued to respondent is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon 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:

a. 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

b. 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

c. a conviction of any crime

d. the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

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

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled

interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

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

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7200 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

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

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

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7200, 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 7200, 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 7200, 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 7200, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

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

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

7. 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.

8. Restriction on Supervision and Oversight of Licensed Facilities

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any entity licensed by the Board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$5,514.17. Respondent shall make said payments on a schedule to be determined by the Board.

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

10. 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.

11. Status of License

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

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

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the Board for surrender. 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 license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

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

13. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as an intern pharmacist or pharmacist in California for a minimum of 30 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

If respondent does not practice as an intern pharmacist or pharmacist 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 an intern pharmacist or pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

14. Violation of Probation

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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.

15. Completion of Probation

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

DATE: 06/08/2022

Naki Margolis

NAKI MARGOLIS

Administrative Law Judge

Office of Administrative Hearings

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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7200

13 **ARAM AVAKYAN**
14 **300 E. Dryden Street, #35**
Glendale, CA 91207

ACCUSATION

15 **Original Intern Pharmacist Registration No.**
16 **INT 39095**

17 Respondent.

18
19 **PARTIES**

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

22 2. On or about October 14, 2016, the Board issued Original Intern Pharmacist
23 Registration Number INT 39095 to Aram Avakyan (Respondent). The Original Intern
24 Pharmacist Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on May 31, 2022, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

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

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

5 5. Section 493 of the Code states, in pertinent part:

6 (a) Notwithstanding any other law, in a proceeding conducted by a board within
7 the department pursuant to law to deny an application for a license or to suspend or
8 revoke a license or otherwise take disciplinary action against a person who holds a
9 license, upon the ground that the applicant or the licensee has been convicted of a
 crime substantially related to the qualifications, functions, and duties of the licensee
 in question, the record of conviction of the crime shall be conclusive evidence of the
 fact that the conviction occurred, but only of that fact.

10 6. Section 4022 of the Code states:

11 “Dangerous drug” or “dangerous device” means any drug or device unsafe for
12 self-use in humans or animals, and includes the following:

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

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

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

18 7. Section 4300 of the Code states, in pertinent part:

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

20 8. Section 4300.1 of the Code states:

21 The expiration, cancellation, forfeiture, or suspension of a board-issued license
22 by operation of law or by order or decision of the board or a court of law, the
23 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.

24
25 9. Section 4301 of the Code states, in pertinent part:

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

28

(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.

....

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

....

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

REGULATORY PROVISIONS

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

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

11. Health and Safety Code section 11054, states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule I.

....

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of

1 this subdivision only, the term “isomer” includes the optical, position, and geometric
2 isomers):

3

4 (13) Cannabis.

5 12. Health and Safety Code section 11055, states, in pertinent part:

6 (a) The controlled substances listed in this section are included in Schedule II.

7 . . .

8 (d) Stimulants. Unless specifically excepted or unless listed in another
9 schedule, any material, compound, mixture, or preparation which contains any
10 quantity of the following substances having a stimulant effect on the central nervous
11 system:

12 (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

13 13. Health and Safety Code section 11057, states, in pertinent part:

14 (a) The controlled substances listed in this section are included in Schedule IV.

15

16 (d) Depressants. . . .

17 14. Health and Safety Code section 11170, states:

18 No person shall prescribe, administer, or furnish controlled substance for
19 himself.

20 15. Health and Safety Code section 11350, subdivision (a) states, in pertinent part:

21 (a) Except as otherwise provided in this division, every person who possesses
22 (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of
23 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
24 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
25 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
26 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
27 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
28 practice in this state, shall be punished by imprisonment in a county jail for not more
than one year, except that such person shall instead be punished pursuant to
subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior
convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph
(2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring
registration pursuant to subdivision (c) of Section 290 of the Penal Code.

COST RECOVERY

16. Section 125.3 provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **DANGEROUS DRUG**

6 17. "Amphetamine" is a synthetic compound and acts as a central nervous system
7 stimulant, and is a Schedule II controlled substance pursuant to Health and Safety Code section
8 11055 (a)(d)(1) and is categorized as a dangerous drug pursuant to Business and Professions
9 Code section 4022.

10 18. "Benzodiazepine" is a central nervous system depressant, and is a Schedule IV
11 controlled substance pursuant to Health and Safety Code section 11057 (d), and is categorized as
12 a dangerous drug pursuant to Business and Professions Code section 4022.

13 19. "Cannabinoids" are substances derived from the cannabis plant and include both the
14 psychoactive and non-psychoactive compounds known as THC and CBD as well as compounds
15 called terpenes. Cannabis is a Schedule I controlled substance pursuant to Health and Safety Code
16 section 11054 (d)(13) and is categorized as a dangerous drug pursuant to Business and
17 Professions Code section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 20. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
21 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
22 was convicted of a crime substantially related to the qualifications, functions, and duties of an
23 intern pharmacist. On or about August 31, 2021, after a plea of nolo contendere, Respondent was
24 convicted of one (1) misdemeanor count of violating Vehicle Code section 23153, subdivision (f)
25 [driving while under the influence of any drug, and causes bodily injury to any person other than
26 the driver] in the criminal proceeding entitled: *The People of the State of California v. Aram*
27 *Avakyan* (Super. Ct. L.A. County Case No. GA108710). The court sentenced Respondent to serve
28 one (1) day in jail and placed him on three (3) years of probation with terms and conditions. The

1 circumstances surrounding the conviction are that on or about July 23, 2020, officers responded
2 to a traffic collision with injuries. Upon contact, officers observed Respondent to exhibit
3 objective signs and symptoms of drug intoxication. Respondent refused to submit to a blood test
4 and as a result, a warrant was issued for a blood draw. Respondent tested positive for
5 Amphetamines, Benzodiazepines, and Cannabinoids.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of Alcohol and/or Dangerous Drug)**

8 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
9 in that on or about July 23, 2020, Respondent used dangerous drugs to the extent or in a manner
10 as to be dangerous or injurious to himself, another person, or to the public. Complainant refers to,
11 and by this reference incorporates, the allegations set forth above in paragraph 20, as though set
12 forth fully.

13 **PRAYER**

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

16 1. Revoking or suspending Original Intern Pharmacist Registration Number INT 39095,
17 issued to Aram Avakyan;

18 2. Ordering Aram Avakyan to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,

21 3. Taking such other and further action as deemed necessary and proper.
22
23

24 DATED: 10/17/2021
25 _____

Signature on File

26 ANNE SODERGREN
27 Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
28 *Complainant*

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