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

12 In the Matter of the Accusation Against:

13 **KIMBERLY MELENDEZ**  
14 10108 San Carlos Ave, #B  
15 South Gate, CA 90280

16 Pharmacy Technician Registration No. TCH  
17 154991

18 Respondent.

Case No. 7263

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

19  
20 **FINDINGS OF FACT**

21 1. On or about May 4, 2022, Complainant Anne Sodergren, in her official capacity as  
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
23 Accusation No. 7263 against Kimberly Melendez (Respondent) before the Board of Pharmacy.  
24 (Accusation attached as Exhibit A.)

25 2. On or about July 22, 2016, the Board of Pharmacy (Board) issued Pharmacy  
26 Technician Registration No. TCH 154991 to Respondent. The Pharmacy Technician Registration  
27 was in full force and effect at all times relevant to the charges brought in Accusation No. 7263  
28 and will expire on June 30, 2024, unless renewed.

1           3.     On or about May 6, 2022, Respondent was served by Certified and First Class Mail  
2 copies of the Accusation No. 7263, Statement to Respondent, Notice of Defense, Request for  
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
5 is required to be reported and maintained with the Board. Respondent's address of record was  
6 and is: 10108 San Carlos Ave, #B, South Gate, CA 90280.

7           4.     Service of the Accusation was effective as a matter of law under the provisions of  
8 Government Code section 11505(c) and/or Business and Professions Code section 124.

9           5.     Government Code section 11506(c) states, in pertinent part:

10                   (c) The respondent shall be entitled to a hearing on the merits if the respondent  
11 files a notice of defense . . . and the notice shall be deemed a specific denial of all  
12 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense  
13 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its  
14 discretion may nevertheless grant a hearing.

15           6.     The Board takes official notice of its records and the fact that Respondent failed to  
16 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore  
17 waived her right to a hearing on the merits of Accusation No. 7263.

18           7.     California Government Code section 11520(a) states, in pertinent part:

19                   (a) If the respondent either fails to file a notice of defense . . . or to appear at  
20 the hearing, the agency may take action based upon the respondent's express  
21 admissions or upon other evidence and affidavits may be used as evidence without  
22 any notice to respondent . . . .

23           8.     Pursuant to its authority under Government Code section 11520, the Board finds  
24 Respondent is in default. The Board will take action without further hearing and, based on the  
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
26 finds that the charges and allegations in Accusation No. 7263, are separately and severally, found  
27 to be true and correct by clear and convincing evidence.

28           9.     The Board finds that the actual costs for Investigation and Enforcement are \$2,662.50  
as of August 5, 2022.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Kimberly Melendez has  
3 subjected her Pharmacy Technician Registration No. TCH 154991 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
6 Registration based upon the following violations alleged in the Accusation which are supported  
7 by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:  
8 Business and Professions Code section 4301, subdivision (h), on the grounds of unprofessional  
9 conduct, in that Respondent used alcoholic beverages to an extent or in a manner dangerous or  
10 injurious to herself, any person, or the public on September 5, 2020 and January 1, 2021.

11 **ORDER**

12 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 154991, issued to  
13 Respondent Kimberly Melendez, is revoked.

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

18 This Decision shall become effective at 5:00 p.m. on October 12, 2022.

19 It is so ORDERED on September 12, 2022.

20  
21 BOARD OF PHARMACY  
22 DEPARTMENT OF CONSUMER AFFAIRS  
23 STATE OF CALIFORNIA

24 65333611.DOCX  
25 DOJ Matter ID:LA2022600948

26 Attachment:  
27 Exhibit A: Accusation

28  
By 

Seung W. Oh, Pharm. D.  
Board President

# Exhibit A

Accusation

1 ROB BONTA  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
4 State Bar No. 206911  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6310  
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. 7263

13 **KIMBERLY MELENDEZ**  
10108 San Carlos Ave, #B  
14 South Gate, CA 90280

**ACCUSATION**

15 Pharmacy Technician Registration  
16 No. TCH 154991

Respondent.

17  
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 July 22, 2016, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 154991 to Kimberly Melendez (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on June 30, 2022, unless renewed.

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1 **JURISDICTION**

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

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

6 5. Section 4300.1 states:

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

13 **STATUTORY PROVISIONS**

14 6. Section 492 states:

15 Notwithstanding any other provision of law, successful completion of any  
16 diversion program under the Penal Code, or successful completion of an alcohol and  
17 drug problem assessment program under Article 5 (commencing with section  
18 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
19 agency established under Division 2 (commencing with Section 500) of this code, or  
20 any initiative act referred to in that division, from taking disciplinary action against a  
21 licensee or from denying a license for professional misconduct, notwithstanding that  
22 evidence of that misconduct may be recorded in a record pertaining to an arrest.

23 This section shall not be construed to apply to any drug diversion program  
24 operated by any agency established under Division 2 (commencing with Section 500)  
25 of this code, or any initiative act referred to in that division.

26 7. Section 4301 states, in pertinent part:

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

....

(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.

**REGULATORY PROVISIONS**

8. 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.

### **COST RECOVERY**

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

### **CAUSE FOR DISCIPLINE**

#### **(Dangerous Use of Alcohol)**

10. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any person, or the public, as follows:

a. On or about September 5, 2020, officers contacted Respondent after observing her in a vehicle stopped on a roadway with her alarm sounding and lights flashing. While speaking to her, the officer could smell the odor of alcohol emitting from inside the vehicle and noted that she had bloodshot, watery eyes. Respondent admitted to drinking one shot and three beers. While at the scene, Respondent submitted to a series of field sobriety tests that she was unable to perform as indicated. During the booking procedure, Respondent provided a blood sample that revealed a blood alcohol content level of 0.22%. Subsequently, criminal charges were filed in the criminal proceeding entitled *The People of the State of California v. Kimberly Melendez* (Super. Ct. L.A., 2020, No. 0AM03671). On or about December 24, 2020, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in her blood] and Vehicle Code section 23103 [wet reckless.] The court deferred pronouncement of sentence for 12 months pending Respondent's enrollment in an 18 month multiple offender DUI program, completion of a hospital and morgue program, MADD, 20 days of community labor and ordered her to undergo drug testing twice per month for a year.

b. On or about January 1, 2021, Respondent was involved in a non-injury automobile collision. Responding officers observed Respondent to have slurred speech, bloodshot watery eyes and the odor of alcohol emitting from her breath and person. Respondent submitted to a series of field sobriety tests that she was unable to perform as indicated and was subsequently placed under arrest for violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol].

## PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 154991, issued to Kimberly Melendez;

2. Ordering Kimberly Melendez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 5/4/2022

Signature on File

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

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