

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

**In the Matter of the Accusation Against:**

**RICHARD SAYAGO MELEZA, Respondent**

**Agency Case No. 7395**

**OAH Case No. 2023030524**

**DECISION AFTER REJECTION**

Wim van Rooyen, Administrative Law Judge (ALJ), of the Office of Administrative Hearings (OAH), an independent adjudicative agency of the State of California, heard this matter by videoconference on April 20, 2023, from Sacramento, California.

Katelyn Docherty, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Sarbdeep Atwal, Attorney at Law, represented Richard Sayago Meleza (respondent), who appeared.

Evidence was received, the record closed, and the matter submitted for decision on April 20, 2023.

The ALJ issued a Proposed Decision on April 28, 2023. On June 30, 2023,

pursuant to section 11517 of the Government Code, the Board issued an Order rejecting the Proposed Decision. The Board ordered and subsequently received the transcripts (administrative record) of the hearing, and on August 18, 2023, issued an Order setting September 17, 2023, as the date for the submission of written argument. No new evidence was permitted. Counsel for complainant timely filed written argument; no written argument was submitted on behalf of respondent.

The Board, having reviewed and considered the entire record, including the transcript and exhibits and written argument submitted by complainant, now issues this Decision After Rejection, consistent with the Board's Disciplinary Guidelines.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. On February 20, 2015, the Board issued respondent Pharmacy Technician Registration No. TCH 146539 (registration). The registration will expire on November 30, 2024, unless renewed.

2. On January 20, 2023, the Board's Executive Officer, in her official capacity, signed and later filed an accusation in Case No. 7395 (Accusation) against respondent. The Accusation alleged three causes to discipline respondent: (1) conviction of substantially related crimes; (2) dangerous use of alcohol; and (3) conviction of multiple misdemeanors involving use, consumption, or self-administration of alcohol. Additionally, to determine the degree of any discipline warranted, the Accusation alleged that the Board previously issued respondent a citation and fine. The Accusation sought revocation of respondent's registration and an award of complainant's reasonable investigation and enforcement costs.

3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before the ALJ, pursuant to Government Code section 11500 et seq., and the April 20, 2023 hearing followed.

## **Complainant's Evidence**

### **CRIMINAL CONVICTIONS**

4. On December 16, 2015, in Sutter County Superior Court, Case No. CRTR-000433, respondent was convicted on a guilty plea of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or higher), a misdemeanor. The court sentenced respondent to 30 days in county jail and ordered respondent to serve five years of summary probation, pay fees/fines, and drive only with a functioning ignition interlock device.

The December 2015 conviction arose from respondent's October 17, 2015 arrest for driving under the influence (DUI) of alcohol. Breath testing revealed that respondent had a BAC of 0.21 percent.

5. On September 23, 2019, in Yuba County Superior Court, Case No. CRTR19-00846, respondent was convicted on a no contest plea of violating Vehicle Code section 23103/23103.5 (wet/reckless driving), a misdemeanor. The court ordered respondent to serve 18 months of summary probation, complete an 18-month DUI program, and pay fees/fines. Complainant did not offer evidence of the specific factual circumstances from which the September 2019 conviction arose.

6. On June 15, 2022, in Sutter County Superior Court, Case No. CRM22-0000255, respondent was convicted on a no contest plea of violating Penal Code section 148, subdivision (a)(1) (willfully resisting, delaying, or obstructing a peace

officer), a misdemeanor. The court ordered respondent to serve one year of summary probation and pay fees/fines.

The June 2022 conviction arose from the following events: on January 1, 2022, a Yuba City Police Department officer responded to a domestic violence call from a residence in Yuba City, California. Upon arrival, the officer heard yelling and observed respondent in the residence's front yard. The officer approached respondent and instructed respondent to put his hands behind his back. Respondent ignored the command. The officer attempted to place respondent in handcuffs, but respondent kept pulling his arms away. To attempt to control respondent, the officer threw respondent to the ground. Respondent then stopped resisting and the officer handcuffed him.

Respondent told the officer that he had been drinking for the New Year's Eve celebration and had gotten into a verbal argument with his former girlfriend. Based on witness interviews and video footage, the officer determined that no domestic violence had occurred. However, the officer observed that respondent's eyes were red and watery, and respondent smelled strongly of alcohol. The officer arrested respondent out of fear for the safety of respondent and others. The officer believed that respondent would continue to fight and/or cause a disturbance if not taken into custody.

### **CITATION AND FINE**

7. On October 29, 2019, the Board issued respondent Citation No. CI 2018 84293 because of his conviction of more than one misdemeanor involving use, consumption, or self-administration of alcohol; dangerous use of alcohol; and conviction of substantially related crimes (2019 Citation). The 2019 Citation was based on respondent's December 2015 and September 2019 convictions and their underlying

conduct. It imposed a fine of \$400, which respondent paid in full.

### **TESTIMONY OF NOELLE RANDALL, PHARM.D.**

8. Noelle Randall earned her Doctor of Pharmacy degree from the University of Iowa in 2008. She has been a licensed California pharmacist since 2009 and a Board inspector since 2014.

9. As a Board inspector, Dr. Randall investigates complaints, inspects pharmacies, and educates Board licensees and the public about pharmacy statutes and regulations. Before her employment by the Board, Dr. Randall worked for several years as a floater pharmacist, staff pharmacist, and pharmacist-in-charge at a large chain retail pharmacy. In those capacities, she supervised and managed the work of pharmacy technicians. Based on her work experience, she is familiar with the duties and responsibilities of a pharmacy technician as well as the laws and regulations that govern pharmacy technicians.

10. Pharmacy technicians are responsible for processing prescriptions; preparing, packaging, and labeling medications; counting inventory; and interacting with patients. As part of their work, they have access to dangerous drugs, controlled substances, and patients' protected health information. Thus, they must be competent to perform accurate and detailed work, be trustworthy and law-abiding, and possess good judgment.

11. Dr. Randall reviewed respondent's criminal conviction history. Based on her professional experience, she opined that respondent's multiple alcohol-related convictions raise serious concerns regarding a pattern of substance abuse and poor judgment. This is problematic given the unique access pharmacy technicians have to drugs and protected health information. Moreover, if respondent consumes alcohol

and works under the influence, it may lead to medication errors and harm patients.

## **Respondent's Evidence**

12. Respondent testified at hearing. He also presented character letters.

## **RESPONDENT'S TESTIMONY**

13. Respondent concedes that cause for discipline exists. He admits each of his criminal convictions.

14. On October 17, 2015, respondent was arrested while driving home from a wedding. He drank so much alcohol at the wedding that he does not remember "grabbing the keys" and making the conscious decision to drive. It was a "big mistake" and he justly received a severe sentence in the related December 2015 conviction.

15. Regarding the incident that led to respondent's September 2019 conviction, he recalls camping with his family at a lake and having a "couple of beers." He waited until he no longer felt impaired and then drove home with his children in the car. However, when pulled over by police, respondent's BAC still measured over the legal limit.

16. As for the January 1, 2022 incident underlying respondent's June 2022 conviction, he and his former girlfriend were drinking and celebrating New Year's Eve at home. Respondent drank approximately four shots of liquor and some beer. After respondent and his former girlfriend got into an argument about "silly relationship stuff," she left and returned with some of her family members. A confrontation ensued and the police were called, but there was no physical violence involved. Respondent also does not recall fighting with the police officer. He was surprised and bewildered when the officer arrived, which may have resulted in his initial resistance. Ultimately,

respondent cooperated with the arrest.

17. Respondent has satisfied the requirements of his criminal sentences by completing all required classes and paying all fees/fines. He stated that his probation for the June 2022 conviction will terminate in June 2023.

18. Respondent acknowledges his prior poor judgment involving alcohol but does not believe he is dependent on alcohol. He has never attended Alcoholics Anonymous or another 12-step support group. Respondent stated that he has learned that excessive alcohol use can lead to negative consequences, and that he now substantially limits his alcohol use. He does not go out to bars anymore. He only drinks at home, typically on the weekend with friends or an occasional "beer or two" after work. At the April 2023 hearing, respondent stated that he had consumed alcohol at a family barbecue the weekend just before the hearing. That time, he just had "a few beers."

19. Respondent is 29 years old. He has worked as a pharmacy technician since 2015. He has never had any work complaints or employer discipline. Since September 2021, he has been employed at Mario's Pharmacy, an independent pharmacy in Yuba City. He works there approximately 40 hours a week. It is his only income source as a single father to support his two children, ages 10 and 11.

20. Respondent has never worked under the influence of alcohol. He does not believe his alcohol use ever affected the quality of his work. Nevertheless, respondent stated he is willing to abstain from alcohol and comply with any substance-abuse- related probation conditions the Board deems appropriate.

## **CHARACTER LETTERS**

21. Respondent presented three character letters. The first is a letter from respondent's current employer, who describes respondent as hardworking, dedicated, reliable, professional, and "always willing to go the extra mile." The second letter is from respondent's mother, who attests that respondent is a dedicated father to his two children and also helps financially support his 80-year-old grandmother, who suffers from dementia. The third letter is from respondent's current girlfriend, who describes him as loving, dependable, and responsible. None of the letters discussed respondent's convictions or alcohol use.

### **Costs**

22. Complainant did not offer any evidence of investigation costs. However, complainant incurred \$3,560 in enforcement costs, as documented in a Certification of Prosecution Costs: Declaration of Katelyn E. Docherty, dated March 21, 2023. That certification describes the general tasks performed, the time spent on each task, and the method of calculating the costs.

## **LEGAL CONCLUSIONS**

1. "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 4001.1.)

### **Burden and Standard of Proof**

2. Absent a statute to the contrary, the burden of proof in civil



administrative disciplinary proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) Thus, complainant bears the burden of proof.

3. In determining the proper standard of proof to apply in license disciplinary proceedings, courts have drawn a distinction between professional licenses and nonprofessional or occupational licenses. In proceedings involving a professional license, the standard of proof is clear and convincing evidence, while in disciplinary proceedings involving a nonprofessional or occupational license, the standard of proof is preponderance of the evidence. (*Lone Star Sec. & Video, Inc. v. Bur. of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.)

4. A pharmacy technician registration is more akin to a nonprofessional or occupational license because pharmacy technicians are not required to satisfy extensive educational, training, and testing requirements like those required of pharmacists. Thus, the preponderance of the evidence standard of proof applies here. The term preponderance of the evidence means "more likely than not" (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1387), or "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Cause for Discipline**

5. "The board shall take action against any holder of a license who is guilty of unprofessional conduct....." (Bus. & Prof. Code, § 4301.) Unprofessional conduct includes the dangerous use of alcohol (*id.*, subd. (h)); the conviction of more than one misdemeanor involving the use, consumption, or self-administration of any alcoholic beverage (*id.*, subd. (k)); and conviction of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician (*id.*, subd. (l)).

6. Respondent concedes that cause exists to discipline his registration. Even if he did not, complainant established respondent's three misdemeanor convictions by a preponderance of the evidence. The December 2015 and September 2019 convictions involved driving under the influence of alcohol. The June 2022 conviction involved belligerent behavior and resisting a police officer following alcohol consumption. The behavior underlying each conviction placed respondent and the public at great risk of harm. Additionally, the convictions are all substantially related to the qualifications, functions, and duties of a pharmacy technician. As Dr. Randall persuasively explained, they raise serious concerns regarding a pattern of substance abuse and poor judgment, which are incompatible with the qualifications, functions, and duties of a pharmacy technician.

7. Thus, cause exists to discipline respondent's registration under Business and Professions Code section 4301, subdivisions (h), (k), and (l). The only remaining question is the appropriate degree of discipline.

### **Appropriate Discipline**

8. For the reasons discussed above, respondent's convictions are serious. The June 2022 conviction is also recent; respondent was still on criminal probation for that conviction when the hearing was conducted in April 2023. Additionally, respondent has previously been cited by the Board for alcohol-related misconduct. This troubling pattern of behavior and poor judgment constitutes a Category IV violation under the Board's Disciplinary Guidelines. Category IV is the most serious category of violations, and the recommended penalty is license revocation.

9. To respondent's credit, he accepts responsibility for his convictions, underlying misconduct, and poor judgment. He successfully completed all the

requirements of his criminal sentences. He has worked as a pharmacy technician for over eight years with no work complaints or employer discipline. His current employer deems him an exemplary employee.

10. The ALJ found these mitigating factors sufficient to justify deviating from the Disciplinary Guidelines by ordering a five-year period of probation. Upon consideration of all the evidence, the Board does not agree with this outcome. Given (1) the serious and repeated nature of respondent's alcohol-related offenses, (2) the fact that he was cited in 2019 based on two alcohol-related convictions, and was subsequently arrested and convicted again in 2022 for a conduct arising from alcohol consumption, (3) that although he appears to recognize his prior poor judgment involving alcohol, he still continues to consume alcohol, and (4) that although his alcohol use has not previously affected his work, the Board need not wait until patient harm occurs (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772), the Board finds that revocation is the appropriate form of discipline in this case. This is both consistent with the Disciplinary Guidelines, and necessary to protect the public health, safety, and welfare.

## **Costs**

11. The Board may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 125.3, subd. (a).) As noted in Factual Finding 22, complainant incurred a total of \$3,560 in enforcement costs.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed or reduced in the particular circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits

of their position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

13. Here, the costs sought are relatively low. The ALJ found that the scope of the investigation was appropriate, and complainant did not seek any investigation costs. No charges were dismissed or reduced at hearing. Moreover, respondent did not offer any evidence of inability to pay costs. The ALJ found that other factors also did not strongly suggest that cost reduction is warranted. Thus, the ALJ determined that it was appropriate to award the full amount of costs sought.

## **ORDER**

Pharmacy Technician Registration No. TCH 146539, issued to respondent Richard Sayago Meleza is REVOKED. Respondent shall relinquish his license, including any indicia of licensure issued by the Board, to the Board within 10 days of the effective date of this Decision. Respondent may not reapply or petition the Board for reinstatement of his revoked license for three years from the effective date of this Decision.

As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$3,560. Said amount shall be paid in full prior to the reinstatement of his license unless otherwise ordered by the Board.

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This Decision shall become effective at 5:00 p.m. on December 20, 2023.

It is so ORDERED on November 20, 2023.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with a large initial "S" and "O".

Seung W. Oh, Pharm.D.  
Board President

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

**In the Matter of the Accusation Against:**

**RICHARD SAYAGO MELEZA, Respondent**

**TCH 146539**

**Agency Case No. 7395**

**OAH Case No. 2023030524**

**ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT**

The transcripts (administrative record) of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting Proposed Decision dated June 30, 2023. The California State Board of Pharmacy will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or [susan.cappello@dca.ca.gov](mailto:susan.cappello@dca.ca.gov) on or before **September 17, 2023**.

It is so ORDERED on August 18, 2023.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly visible.

Seung W. Oh, Pharm.D.  
Board President

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

**In the Matter of the Accusation Against:**

**RICHARD SAYAGO MELEZA**

**TCH 146539**

**Agency Case No. 7395**

**Respondent**

**OAH No. 2023030524**

**ORDER REJECTING PROPOSED DECISION**

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.



The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on June 30, 2023.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

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Seung W. Oh, Pharm.D.  
Board President

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

**In the Matter of the Accusation Against:**

**RICHARD SAYAGO MELEZA, Respondent**

**Agency Case No. 7395**

**OAH Case No. 2023030524**

**PROPOSED DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 20, 2023, from Sacramento, California.

Katelyn Docherty, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Sarbdeep Atwal, Attorney at Law, represented Richard Sayago Meleza (respondent), who appeared.

Evidence was received, the record closed, and the matter submitted for decision on April 20, 2023.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. On February 20, 2015, the Board issued respondent Pharmacy Technician Registration No. TCH 146539 (registration). The registration will expire on November 30, 2024, unless renewed.

2. On January 20, 2023, the Board's Executive Officer, in her official capacity, signed and later filed an accusation in Case No. 7395 (Accusation) against respondent. The Accusation alleges three causes to discipline respondent: (1) conviction of substantially related crimes; (2) dangerous use of alcohol; and (3) conviction of multiple misdemeanors involving use, consumption, or self-administration of alcohol. Additionally, to determine the degree of any discipline warranted, the Accusation alleges that the Board previously issued respondent a citation and fine. The Accusation seeks revocation of respondent's registration and an award of complainant's reasonable investigation and enforcement costs.

3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. This hearing followed.

### **Complainant's Evidence**

#### **CRIMINAL CONVICTIONS**

4. On December 16, 2015, in Sutter County Superior Court, Case No. CRTR-000433, respondent was convicted on a guilty plea of violating Vehicle Code section

23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or higher), a misdemeanor. The court sentenced respondent to 30 days in county jail and ordered respondent to serve five years of summary probation, pay fees/fines, and drive only with a functioning ignition interlock device.

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5. On September 23, 2019, in Yuba County Superior Court, Case No. CRTR19-00846, respondent was convicted on a no contest plea of violating Vehicle Code section 23103/23103.5 (wet/reckless driving), a misdemeanor. The court ordered respondent to serve 18 months of summary probation, complete an 18-month DUI program, and pay fees/fines. Complainant did not offer evidence of the specific factual circumstances from which the September 2019 conviction arose.

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The June 2022 conviction arose from the following events: on January 1, 2022, a Yuba City Police Department officer responded to a domestic violence call from a residence in Yuba City, California. Upon arrival, the officer heard yelling and observed respondent in the residence's front yard. The officer approached respondent and instructed respondent to put his hands behind his back. Respondent ignored the command. The officer attempted to place respondent in handcuffs, but respondent

kept pulling his arms away. To attempt to control respondent, the officer threw respondent to the ground. Respondent then stopped resisting and the officer handcuffed him.

Respondent told the officer that he had been drinking for the New Year's Eve celebration and had gotten into a verbal argument with his former girlfriend. Based on witness interviews and video footage, the officer determined that no domestic violence had occurred. However, the officer observed that respondent's eyes were red and watery, and respondent smelled strongly of alcohol. The officer arrested respondent out of fear for the safety of respondent and others. The officer believed that respondent would continue to fight and/or cause a disturbance if not taken into custody.

### **CITATION AND FINE**

7. On October 29, 2019, the Board issued respondent Citation No. CI 2018 84293 because of his conviction of more than one misdemeanor involving use, consumption, or self-administration of alcohol; dangerous use of alcohol; and conviction of substantially related crimes (2019 Citation). The 2019 Citation was based on respondent's December 2015 and September 2019 convictions and their underlying conduct. It imposed a fine of \$400, which respondent paid in full.

### **TESTIMONY OF NOELLE RANDALL, PHARM.D.**

8. Noelle Randall earned her Doctor of Pharmacy degree from the University of Iowa in 2008. She has been a licensed California pharmacist since 2009 and a Board inspector since 2014.

9. As a Board inspector, Dr. Randall investigates complaints, inspects pharmacies, and educates Board licensees and the public about pharmacy statutes and regulations. Before her employment by the Board, Dr. Randall worked for several years as a floater pharmacist, staff pharmacist, and pharmacist-in-charge at a large chain retail pharmacy. In those capacities, she supervised and managed the work of pharmacy technicians. Based on her work experience, she is familiar with the duties and responsibilities of a pharmacy technician as well as the laws and regulations that govern pharmacy technicians.

10. Pharmacy technicians are responsible for processing prescriptions; preparing, packaging, and labeling medications; counting inventory; and interacting with patients. As part of their work, they have access to dangerous drugs, controlled substances, and patients' protected health information. Thus, they must be competent to perform accurate and detailed work, be trustworthy and law-abiding, and possess good judgment.

11. Dr. Randall reviewed respondent's criminal conviction history. Based on her professional experience, she opined that respondent's multiple alcohol-related convictions raise serious concerns regarding a pattern of substance abuse and poor judgment. This is problematic given the unique access pharmacy technicians have to drugs and protected health information. Moreover, if respondent consumes alcohol and works under the influence, it may lead to medication errors and harm patients.

## **Respondent's Evidence**

12. Respondent testified at hearing. He also presented character letters.

## **RESPONDENT'S TESTIMONY**

13. Respondent concedes that cause for discipline exists. He admits each of his criminal convictions.

14. On October 17, 2015, respondent was arrested while driving home from a wedding. He drank so much alcohol at the wedding that he does not remember "grabbing the keys" and making the conscious decision to drive. It was a "big mistake" and he justly received a severe sentence in the related December 2015 conviction.

15. Regarding the incident that led to respondent's September 2019 conviction, he recalls camping with his family at a lake and having a "couple of beers." He waited until he no longer felt impaired and then drove home with his children in the car. However, when pulled over by police, respondent's BAC still measured over the legal limit.

16. As for the January 1, 2022 incident underlying respondent's June 2022 conviction, he and his former girlfriend were drinking and celebrating New Year's Eve at home. Respondent drank approximately four shots of liquor and some beer. After respondent and his former girlfriend got into an argument about "silly relationship stuff," she left and returned with some of her family members. A confrontation ensued and the police were called, but there was no physical violence involved. Respondent also does not recall fighting with the police officer. He was surprised and bewildered when the officer arrived, which may have resulted in his initial resistance. Ultimately, respondent cooperated with the arrest.

17. Respondent has satisfied the requirements of his criminal sentences by completing all required classes and paying all fees/fines. His probation for the June 2022 conviction will terminate in June 2023.

18. Respondent acknowledges his prior poor judgment involving alcohol but does not believe he is dependent on alcohol. He has never attended Alcoholics Anonymous or another 12-step support group. However, respondent has learned that excessive alcohol use can lead to negative consequences, and he now substantially limits his alcohol use. He does not go out to the bars anymore. He only drinks at home, typically on the weekend with friends or an occasional "beer or two" after work. The last time respondent consumed alcohol was at a family barbecue the weekend before the hearing. That time, he just had "a few beers."

19. Respondent is 29 years old. He has worked as a pharmacy technician since 2015. He has never had any work complaints or employer discipline. Since September 2021, he has been employed at Mario's Pharmacy, an independent pharmacy in Yuba City. He works there approximately 40 hours a week. It is his only income source as a single father to support his two children, ages 10 and 11.

20. Respondent has never worked under the influence of alcohol. He does not believe his alcohol use ever affected the quality of his work. Nevertheless, respondent is willing to abstain from alcohol and comply with any substance-abuse-related probation conditions the Board deems appropriate.

### **CHARACTER LETTERS**

21. Respondent presented three character letters. The first is a letter from respondent's current employer, who describes respondent as hardworking, dedicated, reliable, professional, and "always willing to go the extra mile." The second letter is from respondent's mother, who attests that respondent is a dedicated father to his two children and also helps financially support his 80-year-old grandmother, who



suffers from dementia. The third letter is from respondent's current girlfriend, who describes him as loving, dependable, and responsible.

## **Costs**

22. Complainant did not offer any evidence of investigation costs. However, complainant incurred \$3,560 in enforcement costs, as documented in a Certification of Prosecution Costs: Declaration of Katelyn E. Docherty, dated March 21, 2023. That certification describes the general tasks performed, the time spent on each task, and the method of calculating the costs.

## **LEGAL CONCLUSIONS**

1. "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 4001.1.)

## **Burden and Standard of Proof**

2. Absent a statute to the contrary, the burden of proof in civil administrative disciplinary proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) Thus, complainant bears the burden of proof.

3. In determining the proper standard of proof to apply in license disciplinary proceedings, courts have drawn a distinction between professional licenses and nonprofessional or occupational licenses. In proceedings involving a professional

license, the standard of proof is clear and convincing evidence, while in disciplinary proceedings involving a nonprofessional or occupational license, the standard of proof is preponderance of the evidence. (*Lone Star Sec. & Video, Inc. v. Bur. of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.)

4. A pharmacy technician registration is more akin to a nonprofessional or occupational license because pharmacy technicians are not required to satisfy extensive educational, training, and testing requirements like those required of pharmacists. Thus, the preponderance of the evidence standard of proof applies here. The term preponderance of the evidence means “more likely than not” (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1387), or “evidence that has more convincing force than that opposed to it.” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Cause for Discipline**

5. “The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . .” (Bus. & Prof. Code, § 4301.) Unprofessional conduct includes the dangerous use of alcohol (*id.*, subd. (h)); the conviction of more than one misdemeanor involving the use, consumption, or self-administration of any alcoholic beverage (*id.*, subd. (k)); and conviction of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician (*id.*, subd. (l)).

6. Respondent concedes that cause exists to discipline his registration. Even if he did not, complainant established respondent’s three misdemeanor convictions by a preponderance of the evidence. The December 2015 and September 2019 convictions involved driving under the influence of alcohol. The June 2022 conviction involved belligerent behavior and resisting a police officer following alcohol

consumption. The behavior underlying each conviction placed respondent and the public at great risk of harm. Additionally, the convictions are all substantially related to the qualifications, functions, and duties of a pharmacy technician. As Dr. Randall persuasively explained, they raise serious concerns regarding a pattern of substance abuse and poor judgment, which are incompatible with the qualifications, functions, and duties of a pharmacy technician.

7. Thus, cause exists to discipline respondent's registration under Business and Professions Code section 4301, subdivisions (h), (k), and (l). The only remaining question is the appropriate degree of discipline.

### **Appropriate Discipline**

8. For the reasons discussed above, respondent's convictions are serious. The June 2022 conviction is also recent. Additionally, respondent has previously been cited by the Board for alcohol-related misconduct.

9. To respondent's credit, he accepts responsibility for his convictions, underlying misconduct, and poor judgment. He successfully completed all the requirements of his criminal sentences, except that he remains on criminal probation until June 2023. He has worked as a pharmacy technician for over eight years with no work complaints or employer discipline. His current employer deems him an exemplary pharmacy technician. It is also important to be mindful that the purpose of a license discipline proceeding is not to punish, but to protect the public. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

10. In light of the foregoing, placing respondent on Board probation is more appropriate than outright revocation. That said, given the recency of respondent's last conviction and that he is still on criminal probation, a lengthier probation period of

five years is necessary. Additionally, although respondent appears to recognize his prior poor judgment involving alcohol, he still continues to consume alcohol socially. His multiple alcohol-related convictions suggest a potential substance use disorder beyond mere situational poor judgment. Thus, respondent will be required to abstain from alcohol, participate in drug and alcohol testing, and attend substance abuse recovery support groups. Although his alcohol use has not previously affected his work, the Board need not wait until patient harm occurs. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) Such conditions are necessary to protect public health, safety, and welfare.

## **Costs**

11. The Board may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 125.3, subd. (a).) As noted in Factual Finding 22, complainant incurred a total of \$3,560 in enforcement costs.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed or reduced in the particular circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of their position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

13. Here, the costs sought are relatively low. The scope of the investigation was appropriate, and complainant does not seek any investigation costs. No charges were dismissed or reduced at hearing. Moreover, respondent did not offer any

evidence of inability to pay costs. The other factors also do not strongly suggest that cost reduction is warranted. Thus, it is appropriate to award the full amount of costs sought.

## **ORDER**

Pharmacy Technician Registration No. TCH 146539, issued to respondent Richard Sayago Meleza is REVOKED. However, the revocation is STAYED and respondent's registration placed on PROBATION for five 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 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 registration or which is related to the practice of pharmacy or the

manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device, or controlled substance

Failure to timely report 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 or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

#### **4. Cooperate with Board Staff**

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

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

During the period of probation, respondent shall notify all present and prospective employers of the Decision in Case Number 7395 and the terms, conditions, and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 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 30 days of the effective date of this decision, and within 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 or have read the Decision in Case Number 7395, 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 15 days of the change acknowledging that he or she has read the Decision in Case Number 7395, 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 7395, 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 30 days of the effective date of this decision, and within 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 7395, 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 or those employer(s) to submit timely written acknowledgments to the Board shall be considered a violation of probation.

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

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

Respondent shall further notify the Board in writing within 10 days of any change in name, residence address, mailing address, e-mail address, or phone number. Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

## **7. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$3,560. Respondent shall be permitted to pay these costs in a payment plan approved by the Board or its designee, so long as full payment is completed no later than one

year prior to the end date of probation. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

## **8. Probation Monitoring Costs**

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

## **9. Status of License**

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

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

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

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his registration, including any indicia of licensure issued by the Board, along with a request to surrender the registration. The

Board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

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

## **11. Maintain Active, Current Certification**

Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the Board within 10 days of receipt. Failure to maintain active, current certification or to timely submit proof of same shall be considered a violation of probation.

## **12. Practice Requirement – Extension of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient

employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the Board in writing within 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 10 days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum number 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 36 months. The Board or its designee may post a notice of the extended probation period on its website.

### **13. Violation of Probation**

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and the Board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate

probation, and to impose the penalty that was stayed. The Board or its designee may post a notice of the extended probation period on its website.

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

#### **14. Completion of Probation**

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

#### **15. Drug and Alcohol Testing**

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

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

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

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, respondent shall seek and receive approval from the Board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, respondent shall enroll and register with the approved alternate drug testing vendor, and provide to that alternate vendor any documentation required by the vendor, including any necessary payment by respondent. During the period of absence from the area, respondent shall commence testing protocols with the alternate vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the Board or its designee, or to timely enroll and register with, timely commence testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

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

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

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

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

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

## **16. Abstain from Drugs and Alcohol**

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a necessary part of treatment. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit



substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

## **17. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

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

DATE: April 28, 2023

*Wim vanRooyen*

WIM VAN ROOYEN

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. 7395

13 **RICHARD SAYAGO MELEZA**

14 591 Tharp Road  
Yuba City, CA 95993

**ACCUSATION**

15 **Pharmacy Technician License No. 146539**

16 **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 February 20, 2015, the Board of Pharmacy issued Pharmacy Technician  
22 License Number 146539 to Richard Sayago Meleza (Respondent). The Pharmacy Technician  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on November 30, 2024, unless renewed.

25 **JURISDICTION**

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

1           4.     Code section 4011 provides that the Board shall administer and enforce both the  
2 Pharmacy Law [Bus. & Prof. Code §§ 4000, *et seq.*] and the Uniform Controlled Substances Act  
3 [Health & Safety Code §§ 11000, *et seq.*].

4           5.     Code section 4300 states, in pertinent part:

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

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

8                   (1) Suspending judgment.

9                   (2) Placing him or her upon probation.

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

11                  (4) Revoking his or her license.

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

14               (e) The proceedings under this article shall be conducted in accordance with  
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
15 Government Code, and the board shall have all the powers granted therein. The  
action shall be final, except that the propriety of the action is subject to review by the  
16 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

17           6.     Code section 4300.1, states:

18               The expiration, cancellation, forfeiture, or suspension of a board-issued license  
19 by operation of law or by order or decision of the board or a court of law, the  
placement of a license on a retired status, or the voluntary surrender of a license by a  
20 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  
21 a decision suspending or revoking the license.

## 22                                   **STATUTORY PROVISIONS**

23           7.     Section 4301 of the Code states, in pertinent part:

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

26               ...

27               (h) The administering to oneself, of any controlled substance, or the use of any  
28 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

1 to any other person or to the public, or to the extent that the use impairs the ability of  
2 the person to conduct with safety to the public the practice authorized by the license.

3 ...

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

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

## 26 **COST RECOVERY**

27 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 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, with failure of the licensee to comply subjecting the license to not being  
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
included in a stipulated settlement.

## 29 **FIRST CAUSE FOR DISCIPLINE**

### 30 **(Conviction of Substantially Related Crimes)**

31 9. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),  
32 in that he was convicted of crimes that are substantially related to the functions, qualifications and  
33 duties of a pharmacy technician. The circumstances are as follows:  
34

10. On or about June 15, 2022, in the criminal matter titled *People v. Richard Sayago Meleza*, Sutter County Superior Court Case Number CRM22-0000255, Respondent was convicted on his plea of nolo contendere to a misdemeanor violation of Penal Code section 148, subdivision (a)(1) (resisting arrest/obstructing a police officer). The court placed Respondent on probation for a period of one year, and ordered him to pay various fines and fees. The underlying circumstances were as follows:

11. On or about January 1, 2022, an officer with the Yuba City Police Department responded to a domestic violence call in Yuba City, California. Upon arrival, the officer heard yelling and observed a male (later identified as Respondent) in the front yard of a residence. The officer approached Respondent and told him to put his hands behind his back. Respondent ignored the officer's command, and while the officer attempted to place Respondent in handcuffs, Respondent kept pulling his arms away. In an attempt to control Respondent, the officer threw him to the ground, and eventually Respondent gave up which allowed the officer to handcuff him. When the officer discussed the incident with Respondent, Respondent stated that he had been drinking because it was New Year's Eve and that he got into an argument with his girlfriend. The officer observed that Respondent's eyes were red and watery, and a strong odor of alcohol was coming from his person. The officer ended up arresting Respondent, out of fear for his safety and the safety of others, as he was concerned that if he did not take Respondent into custody he would continue to fight.

## **SECOND CAUSE FOR DISCIPLINE**

**(Dangerous Use of Alcohol)**

12. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), in that he administered to herself or otherwise used alcohol to an extent or in a manner as to be dangerous or injurious to herself and others, as alleged in greater detail, above in paragraphs 10-

11.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction of Multiple Misdemeanors Involving Use, Consumption or Self-Administration**  
3 **of Alcohol)**

4 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),  
5 in that he was convicted of more than one misdemeanor involving the use, consumption or self-  
6 administration of alcohol. In addition to the misdemeanor conviction alleged above in paragraph  
7 10, which is incorporated herein by reference, Respondent sustained additional misdemeanor  
8 convictions involving alcohol as follows:

9 **December 16, 2015 DUI Conviction**

10 14. On or about December 16, 2015, in the criminal matter titled *People v. Richard*  
11 *Sayago Meleza*, Sutter County Superior Court Case Number CRTR000433, Respondent was  
12 convicted on his plea of guilty to driving while having a blood alcohol content of 0.08% or  
13 higher, in violation of Vehicle Code section 23152, subdivision (b). The court sentenced  
14 Respondent to serve 30 days in county jail, and placed him on probation for a period of five  
15 years. Further, the court ordered Respondent to not drive without a functioning ignition interlock  
16 device, and to pay various fines and fees.

17 **September 23, 2019 Wet/Reckless Driving Conviction**

18 15. On or about June 18, 2019, in the criminal matter titled *People v. Richard Sayago*  
19 *Meleza*, Yuba County Superior Court Case Number CRTR19-00846, Respondent was convicted  
20 on his plea of guilty to wet/reckless driving, in violation of Vehicle Code section 23103 per  
21 23103.5. The court placed Respondent on probation for three years, and to pay various fines and  
22 fees.

23 **DISCIPLINE CONSIDERATIONS**

24 16. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges that on or about October 29, 2019, the Board of Pharmacy issued Citation  
26 and Fine number CI-2018-84293 to Respondent for the following violations: (i) conviction of  
27 more than one misdemeanor or any felony involving the use, consumption, or self-administration  
28 of any dangerous drug or alcoholic beverage, pursuant to Code section 4301, subdivision (k); (ii)

1 the administering to oneself of any controlled substance, or the use of any dangerous drug or of  
2 alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself,  
3 pursuant to Code section 4301, subdivision (h); and (iii) conviction of a substantially related  
4 crime, pursuant to Code section 4301, subdivision (l). The circumstances underlying the citation  
5 are the same as those described in paragraphs 14-15 above, each of which are incorporated herein  
6 by reference. The citation has since become final, and Respondent has paid the \$400 fine  
7 imposed thereby.

8 **PRAYER**

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

11 1. Revoking or suspending Pharmacy Technician License Number 146539, issued to  
12 Richard Sayago Meleza;

13 2. Ordering Richard Sayago Meleza to pay the Board of Pharmacy the reasonable costs  
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
15 section 125.3; and,

16 3. Taking such other and further action as deemed necessary and proper.  
17  
18

19 DATED: 1/20/2023  
20

Sodergren,  
Anne@DCA

Digitally signed by Sodergren,  
Anne@DCA  
Date: 2023.01.20 06:47:58 -08'00'

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

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