

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

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

**CYNDI IRENE BALDENEGRO**

**Pharmacy Technician Registration No. TCH 78282**

**Respondent.**

**Agency Case No. 7605**

**OAH No. 2024020431**

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 3, 2024.

It is so ORDERED on September 3, 2024.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

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Seung W. Oh, Pharm.D.  
Board President

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**PROPOSED DECISION**

Administrative Law Judge Cindy F. Forman (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 29, 2024.

M. Travis Peery, Deputy Attorney General, appeared on behalf of complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Cyndi Irene Baldenegro represented herself.

The ALJ received testimony and documentary evidence and heard argument. The ALJ ordered the record be kept open until June 21, 2024, to allow respondent to submit additional evidence and for complainant to respond. On June 14, 2024, complainant's counsel uploaded to Case Center an email from respondent's fiancé, marked as Exhibit A. Attached to Exhibit A was complainant's counsel's letter noting he had no objection to the admission of the email as administrative hearsay. The email and counsel's letter were admitted as Exhibit A; the email was admitted as administrative hearsay.

The record closed and the matter was submitted for decision on June 21, 2024.

## **SUMMARY**

Respondent's pharmacy technician registration is currently suspended based on her incarceration for a felony conviction in April 2023. Complainant now seeks to discipline respondent's pharmacy technician registration based on that felony conviction as well as respondent's two other criminal convictions for driving under the influence of alcohol (DUI). Complainant proved by a preponderance of evidence respondent was convicted of three alcohol-related crimes she committed in 2019 and 2020. Respondent took responsibility for the crimes and testified she has been sober since 2020. However, respondent offered insufficient evidence in support of her assertion of continued sobriety, and thus it cannot be determined whether respondent is fit to resume practice as a registered pharmacy technician. Additionally, respondent remains on criminal probation until 2025. Revocation of respondent's pharmacy technician registration thus is necessary at this time to ensure the protection of the public.

## **Jurisdictional Matters**

1. On August 23, 2007, the Board issued Pharmacy Technician Registration Number TCH 78282 (registration) to respondent. The registration was in full force and effect at all times relevant to the charges alleged in the Accusation and is scheduled to expire on September 30, 2024.

2. On August 31, 2023, the Board automatically suspended respondent's registration under Business and Professions Code (Code) section 4311, subdivision (a), because of respondent's incarceration after her felony DUI conviction. (Exhibit 1, p. A31.) The suspension remains in effect until the Board issues a final decision on this Accusation, which is based in part on the charges underlying the suspension. (*Ibid.*)

3. Complainant signed the Accusation in her official capacity on September 25, 2023. The Accusation seeks discipline of respondent's registration under Code sections 4301, subdivisions (h), (k), and (l), and 490, in conjunction with California Code of Regulations, title 16 (CCR), section 1770, based on respondent's criminal convictions of alcohol-related crimes, which the Board alleges are substantially related to the qualifications, functions, or duties of a pharmacy technician, and respondent's dangerous use of alcohol.

4. On September 20, 2023, the Board received respondent's Request for Hearing under Code section 4311 to contest the automatic suspension of her registration. The Board considered the Request for Hearing as a Notice of Defense to the Accusation.

5. All jurisdictional requirements are met.

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## **Criminal Convictions**

### **APRIL 13, 2023 CRIMINAL CONVICTIONS**

6. Respondent incurred two criminal convictions on April 13, 2023. In the first, the court convicted respondent, upon her plea of guilty, of violating Vehicle Code section 23153, subdivision (b), DUI while having 0.08 percent or more, by weight, of alcohol in her blood (BAC) and causing bodily injury, a felony. (Super. Ct., San Bernardino County, 2023, No. BSB20001199.) The court sentenced respondent to serve 16 months in state prison, with credit for 69 days. Respondent was admitted to Central California Women's Facility on May 30, 2023, and released in November 2023.

7. The circumstances of the first April 2023 conviction are that on April 11, 2020, the police responded to a report of a traffic collision. When the police arrived at the accident scene, respondent already had exited her vehicle and was walking in and out of traffic and in front of moving vehicles. Witnesses informed the police they observed respondent throwing alcoholic beverage cans outside her car window. The police observed respondent to be extremely intoxicated with glossy, bloodshot eyes, an unsteady gait, and slurred speech. Respondent was unable to complete sobriety testing because of her impaired condition. She refused to follow police orders and had to be handcuffed. She also refused to get into the patrol vehicle. Once in the patrol vehicle, respondent repetitively banged her forehead on the vehicle's center divider, thus causing injury to herself. The police records did not include the results of any breathalyzer or blood alcohol testing.

8. Respondent was found to be at fault in the collision because the victim had a green light when respondent collided with the victim's vehicle. The victim sustained various injuries from the collision including severe swelling and bruising to

her knee. The victim was unable to walk after the accident without limping. A search of respondent's vehicle found a carton of wine and a bottle of champagne in the passenger compartment. A record check showed respondent was driving with a suspended license; respondent's license had been suspended sometime in September 2019 after she refused to submit to a chemical blood draw during a DUI investigation in September 2019. No evidence was submitted showing respondent was arrested or detained in September 2019 for any alcohol-related misconduct.

9. In the second April 13, 2023 criminal conviction, the court convicted respondent, upon her plea of guilty, of violating Vehicle Code section 23152, subdivision (g), driving while under the influence of alcohol and drugs, a misdemeanor. (Super. Ct., San Bernardino County, 2023, No. MSB19016054.) The court sentenced respondent to serve 10 days in county jail, with total credit for 10 days already served.

10. The circumstances of respondent's second April 2023 DUI conviction are that on August 25, 2019, at 2:33 a.m., a police officer initiated a traffic enforcement stop after observing respondent driving her vehicle erratically with the vehicle lights off. Respondent refused to provide the officer with her name or exit the vehicle. Respondent displayed objective symptoms of alcohol intoxication and became increasingly aggressive, uncooperative, and combative with the officer. The police officer determined respondent was too intoxicated to perform Field Sobriety Tests. The police officer requested medical aid because of respondent's intoxication and disoriented mental state. Respondent refused medical personnel's efforts to transport her to a hospital for medical treatment, and, because of respondent's conduct, the medical personnel had to strap respondent onto a gurney to restrain her. At the hospital, a blood sample from respondent taken at 4:32 a.m., two hours after the traffic stop, showed a BAC of 0.21 percent and the presence of Midazolam. (Exhibit 8, p. A28,

A29.) Midazolam, commonly known as Versed, is a Schedule IV controlled substance and a dangerous drug according to Code section 4022. No evidence was offered about how respondent acquired Midazolam.

### **DECEMBER 16, 2020 CRIMINAL CONVICTION**

11. On December 16, 2020, the court convicted respondent, upon her plea of guilty, of violating Vehicle Code section 23152, subdivision (a), DUI with prior, and 23152, subdivision (b), DUI while a BAC of 0.08 percent or more, as well as Penal Code section 148, subdivision (a)(1), resisting or obstructing a police officer, all misdemeanors. (Super. Ct., Orange County, Case No. 20HM01411 M A.) (Exhibit 9.) The court placed respondent on five years' summary probation with terms and conditions, including completing an 18-month multiple offender DUI program, serving 120 days in county jail (with credit for four days), and paying fines and fees or completing 18 hours of community service. (*Id.*, pp. A138–A139.)

12. The circumstances of the crime underlying respondent's 2020 DUI conviction are that on August 18, 2019, at 4:32 p.m., a police officer responded to a report of a traffic collision possibly involving an intoxicated driver. (Exhibit 10.) The police officer observed respondent acting belligerently and displaying signs of intoxication including red, watery eyes, slurred speech, an unsteady gait, difficulty following instructions, and emitting an odor of alcoholic beverage. The police officer also saw several empty alcoholic beverage cans in respondent's vehicle. Respondent was unable to complete the field sobriety tests the police officer administered. After her arrest, respondent became combative and injured herself by banging her head on the center divider of the police vehicle. Respondent continued to be combative after she was transported to a hospital emergency room. At 7:03 p.m., more than two hours

after respondent's arrest, respondent's blood sample showed a BAC of 0.21 percent. (*Id.*, p. A178.)

## **Testimony by Board Investigator**

13. Diane Mahone, a Board Investigator with the Board's drug diversion and fraud team since February 2023, testified at hearing as a Board expert about the tasks and responsibilities of a pharmacy technician. According to Investigator Mahone, a pharmacy technician receives information from patients, helps remove drugs from stock to fill prescriptions, and prepares labeling information for pharmacists. Pharmacist technicians also have access to controlled substances and sensitive patient information. They often interact with patients dropping off and picking up prescriptions. Although the law requires pharmacy technicians to be supervised by pharmacists, Investigator Mahone opined they cannot be supervised 100 percent of the time. Given their duties, pharmacy technicians need to exercise good judgment. A lapse in judgment or a decision made when a technician is under the influence of alcohol or drugs could lead to medication errors. The Board therefore expects technicians to be sober, clear-headed, and alert at work.

## **Aggravation, Mitigation, and Rehabilitation Evidence**

14. The Board cited respondent for alcohol-related misconduct on September 3, 2015, and imposed a \$1,500 fine. (Exhibit 3, p. A45.) The citation was based on respondent's arrest on December 20, 2014, for driving a vehicle with a BAC content of 0.22 percent and her subsequent criminal conviction on July 16, 2015, for violating Vehicle Code 23152, subdivision (a), DUI, with enhancement of Vehicle Code section 23538, subdivision (b)(2), driving with a BAC exceeding 0.20 percent, a

misdemeanor. (Super. Ct., San Bernardino County, Case No. TVI1500839.) (Exhibit 11, p. A179.)

15. Respondent attributed her alcohol abuse to an abusive spouse, the unexpected loss of her 13-year-old son in 2016 after he became ill in 2015, and the later break-up of her marriage. From 2015 and 2020, respondent did not know how to grieve in a healthy manner. She had no intention of hurting people when she drove while intoxicated. She resorted to alcohol because she was devastated by her losses.

16. Respondent eventually sought counseling from John J. Kohut, M.D., who submitted a letter on respondent's behalf to the Superior Court in case number 20HM01411MA. (Exhibit 9, p. A158.) The letter dated December 2, 2020, states Dr. Kohut started treating respondent on an outpatient basis in October 2018. Dr. Kohut's letter reported respondent was diagnosed with severe recurrent major depressive disorder, severe recurrent generalized anxiety disorder, severe recurrent bereavement, severe recurrent alcohol dependency, and severe recurrent alcohol abuse. Dr. Kohut's letter also reported respondent actively participated in the Envision Program at Laguna Beach Rehabilitation Center, the outpatient program at Loma Linda Behavior Medicine Center, Alcoholics Anonymous (AA) meetings, and individual therapy. In his letter to the court, Dr. Kohut observed respondent "has actively participated in all modalities of treatment and maintains consistent sobriety." (*Ibid.*) Dr. Kohut requested the court to take into account these interventions. He also noted that "respondent remained under his care and continues to show improvement in all symptoms." (*Ibid.*)

17. Respondent testified she continued her treatment with Dr. Kohut and also attended AA meetings until she entered prison at the end of May 2023. Since her release from prison in November 2023, respondent has been unable to resume

therapy with Dr. Kohut because she lacks health insurance. She no longer attends AA meetings because she does not find them helpful to her emotional state.

18. Respondent does not recall her sobriety date but asserts she has been sober since her therapy with Dr. Kohut. Respondent testified she takes her sobriety "very seriously." Respondent also testified she has been able to abstain from alcohol because she is now more confident and has more willpower. Respondent goes to the gym daily. She regularly attends weekly services at the Seventh Day Adventist Church. Respondent also paints and meditates daily. She cares for her elderly parents by making their meals and giving them their medication. Respondent believes she has made much progress since her arrests in 2019 and 2020 because she has been able to process her grief issues without alcohol and has created a life from which she does not want to escape. Respondent no longer bottles up her emotions. She has identified her triggers. Respondent does not consider herself an alcoholic, and she no longer has any urge to drink alcohol.

19. Respondent remains on probation with the criminal court. The record is unclear as to whether respondent is completing the five-year summary probation period ordered in connection with her December 2020 criminal conviction or if the probation is related to her April 2023 felony conviction. Respondent's probation is scheduled to end in 2025. Respondent testified she reports to her probation officer monthly.

20. Respondent last worked as a registered pharmacy technician in April 2020. Respondent has been unable to find employment since her release from prison because of her suspended registration, her felony conviction, and the suspension of her driver's license as a result of her criminal conviction. Respondent's driver's license is suspended until 2026.

21. In the event respondent is allowed to resume work as a pharmacy technician, she would “do whatever it takes” to demonstrate she is rehabilitated. Respondent asserted she is willing to take part in testing, attend AA meetings, and reestablish her relationship with her sponsor.

22. Respondent submitted a letter of support from her fiancé, Jon Flick, who vouched for her good character. (Exhibit A.) According to Mr. Flick, he and respondent have lived together for nearly five years. He described respondent as a “good person” who misses her work as a registered pharmacy technician. Mr. Flick explained the difficulties respondent faced while in prison where she was subject to the abuse of other inmates. Mr. Flick noted respondent’s kindness and dedication in caring for her elderly parents. He confirmed the AA meetings were upsetting to respondent, but also indicated respondent has now started attending them again. Mr. Flick wrote that respondent is constantly trying to better herself by reading self-help books. According to Mr. Flick, respondent is now stable. He believes respondent has taken full responsibility for past drinking and driving. However, Mr. Flick did not discuss whether respondent is sober or her efforts in maintaining her sobriety.

## **Costs**

23. Complainant seeks reimbursement of enforcement costs totaling \$6,776.25. The costs represent 21.25 hours of attorney time at \$220 per hour and 10.25 hours of paralegal time at \$205 per hour. (Exhibit 12.)

24. Respondent has limited financial resources. She was incarcerated from May through November of 2023 and has been unemployed since her release from prison. Respondent contends her felony conviction and her suspended driver’s license have made it impossible for her to find work.

## LEGAL CONCLUSIONS

### Standard and Burden of Proof

1. A pharmacy technician registration is an occupational license because it does not require rigorous training and the technician performs nondiscretionary tasks. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.) Complainant therefore bears the burden of establishing by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration. (Evid. Code §115.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations.) . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324–325, original italics.) In meeting the burden of proof by a preponderance of the evidence, the complainant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

### Applicable Law

3. The Pharmacy Law authorizes the Board to discipline a pharmacy technician for having been convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician, or for engaging in unprofessional conduct. (Code, §§ 490, 4300.)

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4. The expiration, cancellation, forfeiture, or suspension of a Board-issued license or registration by operation of law or by order of decision of the Board shall not deprive the Board of jurisdiction to commence or proceed with any investigation of or disciplinary proceeding against the licensee or registrant or to render a decision suspending or revoking the license or registration. (Code, § 4300.1.)

5. The record of conviction of a crime is conclusive evidence only of the fact that the conviction occurred. To fix the degree of discipline, the Board may inquire into the circumstances surrounding the commission of the crime. (Code, §§ 493, 4301, subd. (f).)

### **Cause Exists to Discipline**

6. Complainant has met her burden of proof. As noted in Factual Findings 6 through 12, complainant proved by a preponderance of the evidence respondent consumed alcoholic beverages in 2019 and 2020 to an extent dangerous to herself, other drivers, and the public. She drove a motor vehicle on public roadways at least three times with a BAC nearly three times greater than 0.08 percent and, on at least one occasion, her driving while under the influence of alcohol injured another driver. Respondent was convicted of misdemeanor and felony crimes involving her dangerous consumption of alcohol.

### **FIRST CAUSE FOR DISCIPLINE – CONVICTIONS OF SUBSTANTIALLY RELATED CRIMES**

7. It is unprofessional conduct for the holder of a pharmacy technician registration to be convicted of a crime substantially related to the qualifications, functions, and duties of a registered pharmacy technician. (Code, §§ 490, 4301, subd. (f).) A criminal conviction or act is substantially related to the qualifications, functions,

or duties of a registered pharmacy technician if to a substantial degree it evidences the present or potential unfitness to perform the functions authorized by licensure in a manner consistent with the public health, safety, or welfare. (CCR, § 1770, subd. (a).) Substantially related acts include a criminal conviction for driving under the influence of drugs or alcohol. (CCR, § 1770, subd. (c)(5).)

8. Respondent's three alcohol-related convictions are substantially related to the qualifications, functions, or duties of a registered pharmacy technician. The three criminal convictions for drinking and driving have a "'logical connection' to a pharmacy technician's fitness to practice because they "reflect a lack of sound professional and personal judgment" relevant to a pharmacist technician's fitness and competence to perform her assigned tasks. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770, 762–763 [upholding discipline of medical license based on multiple alcohol-related criminal convictions].) Respondent's misconduct does not need to have occurred while working at a pharmacy because the effects of alcohol abuse outside of work spill over and affect respondent's ability to practice her job safely and competently. (See *id.* at p. 771.) Respondent engaged in unprofessional conduct by incurring three convictions for alcohol-related crimes substantially related to the qualifications, functions, or duties of a registered pharmacy technician. (Factual Findings 6–12.) Cause therefore exists under Code sections 490, 4300, and 4301, subdivision (1), in conjunction with CCR section 1770, to discipline respondent's pharmacy technician registration.

## **SECOND CAUSE FOR DISCIPLINE – DANGEROUS USE OF ALCOHOL**

9. It is unprofessional conduct for the holder of a pharmacy technician registration to administer to oneself a controlled substance or to drink alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to

any other person, or to the public, or to the extent that the use impairs the ability to conduct with safety to the public the practice authorized by the registration. (Code, § 4301, subd. (h).) Respondent administered to herself a controlled substance (Versed) and drank alcoholic beverages in a dangerous manner injurious to herself, other persons, and the public. (Factual Findings 6–12.) Cause therefore exists under Code section 4301, subdivision (h), to discipline respondent’s registration.

### **THIRD CAUSE FOR DISCIPLINE – ALCOHOL-RELATED CONVICTIONS**

10. It is unprofessional conduct for a licensee to be convicted of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage or any combination of those substances. (Code, § 4301, subd. (k).) Respondent was convicted of two DUI misdemeanors and one DUI felony in addition to one misdemeanor involving her abuse of alcohol in combination with a controlled substance. (Factual Findings 6–12.) Cause therefore exists under Code section 4301, subdivision (k), to discipline respondent’s registration.

### **Level of Discipline**

11. A determination that legal cause exists to discipline respondent’s pharmacy technician registration does not end the inquiry. Such cause may be overcome with a demonstration of rehabilitation. Respondent has the burden of proving rehabilitation. (*Whetstone v. Board of Dental Examiners of Calif.* (1927) 87 Cal.App. 156, 164.) Respondent has provided insufficient evidence of rehabilitation.

12. The Board’s “A Manual of Disciplinary Guidelines and Model of Disciplinary Orders” (Rev. 2017) (Disciplinary Guidelines), identifies four categories of violations and their associated recommended minimum and maximum penalties, with Category IV violations constituting the serious. According to the Guidelines, Category

III violations encompass most criminal convictions involving alcohol and the recommended penalty ranges from a minimum of five years of probation with terms and conditions to a maximum of revocation. (Exhibit 13, pp. A204–A205.) Category IV violations include repeat criminal convictions involving the abuse of alcohol and repeat Category III violations. The recommended penalty for Category IV violations is revocation. (*Id.*, p. A205.) The Guidelines state that for registered pharmacy technicians “revocation is typically the appropriate penalty when any grounds for discipline are established, and that if revocation is not imposed that a minimum Category III level of discipline should be imposed.” (*Id.*, p. A202.)

13. To determine the appropriate level of discipline, the Board considers several factors, including the actual or potential harm of respondent’s offenses to the public or any consumer, respondent’s prior disciplinary record, any prior warnings or citations issued to respondent, the number and variety of current violations, the nature and severity of the acts or offenses under consideration, compliance with terms of any sentence or criminal probation, overall criminal record, time passed since the acts or offenses, whether the conduct was intentional or negligent, expungement of the offenses, and evidence of mitigation and rehabilitation. (Exhibit 13, p. A200.)

14. Although a few factors weigh in respondent’s favor, i.e., respondent’s offenses did not harm any consumer, she has no prior discipline by the Board, her most recent DUI was in 2020, and she has thus far complied with the terms of her criminal probation, the majority of factors support the revocation of respondent’s registration at this time. Respondent incurred three DUI convictions, one a felony, in which her BAC was nearly three times more than the legal limit. The three DUIs endangered the public, and in one instance, respondent’s DUI injured another driver. Respondent was cited by the Board for her alcohol abuse before her 2019 arrests.

Respondent remains on criminal probation for at least one criminal conviction, and she has not applied to expunge any of her criminal convictions.

15. Respondent also did not provide sufficient independent and objective evidence of rehabilitation. The Guidelines provide examples of appropriate evidence demonstrating rehabilitative efforts and competency. These include recent, dated, written statements or performance evaluations from employers or supervisors; recent, dated, letters from counselors or psychologists regarding respondent's participation in a rehabilitation or recovery program; recent, dated, letters describing the respondent's participation in support groups such as AA; recent, dated, laboratory analyses or drug screen reports confirming abstention from drugs and alcohol; recent, dated physical examination/assessment report(s) by a licensed physician confirming the absence of any physical impairment that would prohibit the respondent from practicing safely; recent, dated letters from probation or parole officers regarding respondent's participation in and/or compliance with terms and conditions of probation or parole; and recent, dated, letters from persons familiar with respondent in either a personal or professional capacity regarding their knowledge of respondent's character, rehabilitation, and other pertinent facts. The Board recommends the letters be provided under penalty of perjury. (Exhibit 13, pp. A201–A202.)

16. Respondent's evidence of rehabilitation was primarily limited to her testimony. Dr. Kohut's letter informing the court of respondent's sobriety was written nearly four years ago; respondent provided no update from Dr. Kohut or any other medical professional regarding her sobriety efforts. (Factual Finding 16.) Although respondent's fiancé submitted an email describing respondent's good character (Factual Finding 22), the email lacked sufficient detail about respondent's sobriety. Further, without any evidence respondent's fiancé had specialized knowledge,

experience, or expertise in pharmacy practice, his email was insufficient by itself to demonstrate respondent's fitness to work as a registered pharmacy technician. Respondent provided no letters from her probation officers, physicians, past employers, or former sponsors who could vouch for her rehabilitative efforts. Respondent also failed to provide any physical assessment or screening to confirm her abstention from drugs or alcohol.

17. Additionally, for the four years between 2020 and 2024, during which respondent was not arrested or convicted of any alcohol-related crime, respondent was either awaiting trial, on criminal probation, or in jail. Because individuals have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally accorded to a licensee's good behavior while on probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080.) Here, respondent's interaction with the criminal justice system since 2020 has served as a strong incentive to avoid additional criminal acts. Consequently, there has been no passage of time, absent that incentive, to assess respondent's rehabilitation.

18. In summary, although respondent asserted she has been sober since 2020, she offered little independent evidence to support her assertion. Without such evidence, her fitness to practice as a registered pharmacy technician cannot be fully ascertained. Additionally, respondent remains on criminal probation. Thus, based on the evidentiary record, it is inconsistent with the Board's goal of public protection to allow respondent to retain her pharmacy technician registration at this time.

## **Cost Recovery**

19. A registrant found to have violated the Pharmacy Law may be directed to pay a sum not to exceed the reasonable costs of investigation and enforcement of the

case. (§ 125.3.) The \$6,776.25 of investigation and enforcement costs incurred by complainant is reasonable.

20. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Board must exercise its discretion to reduce or eliminate costs to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [registrant] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Board, in imposing costs in such situations, must consider the registrant's subjective good faith belief in the merits of her position as well as whether the registrant has raised a colorable defense. The Board must also consider the registrant's ability to make payment.

21. Respondent was not able to obtain dismissal of any charges and has not raised a colorable defense. However, respondent lacks the financial resources to pay the requested costs. Respondent is currently unemployed, and she has been unable to find work because of her felony conviction. Respondent's ability to pay the requested costs will be further impaired by the revocation of her pharmacy technician registration. Accordingly, complainant's request for reimbursement of its enforcement costs is denied.

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## ORDER

1. Pharmacy Technician Registration number TCH 78282 issued to respondent Cyndi Irene Baldenegro is revoked.
2. The automatic suspension of respondent's registration is lifted.
3. Complainant's request for a cost recovery award is denied.

DATE: 07/19/2024

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a stylized, flowing script.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings

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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:

Case No. 7605

13 **CYNDI IRENE BALDENEGRO**

**ACCUSATION**

14 22491 De Berry St., C31  
Grand Terrace, CA 91313

15 Pharmacy Technician Registration No. TCH  
78282

16 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 August 23, 2007, the Board issued Pharmacy Technician Registration  
23 Number TCH 78282 to Cyndi Irene Baldenegro (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on September 30, 2024, unless renewed. On or about August 31, 2023, the Pharmacy  
26 Technician Registration was automatically suspended, pursuant to Business and Professions Code  
27 section 4311, subdivision (a), due to Respondent's incarceration after conviction of a felony.

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## **JURISDICTION**

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

4. Section 4300 states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(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 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

superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Section 4300.1 states:

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

### **STATUTORY PROVISIONS**

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

7. Section 4301 states, in pertinent part:

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

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

....

(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.

....

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

(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

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

### 7 **REGULATORY PROVISIONS**

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

9 (a) For the purpose of denial, suspension, or revocation of a personal or facility  
10 license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the  
11 Business and Professions Code, a crime, professional misconduct, or act shall be  
12 considered substantially related to the qualifications, functions or duties of the  
practice, profession, or occupation that may be performed under the license type  
sought or held if to a substantial degree it evidences present or potential unfitness of  
an applicant or licensee to perform the functions authorized by the license in a  
manner consistent with the public health, safety, or welfare.

13 (b) In making the substantial relationship determination required under  
14 subdivision (a) for a crime, the board will consider the following criteria:

15 (1) The nature and gravity of the offense;

16 (2) The number of years elapsed since the date of the offense; and

17 (3) The nature and duties of the practice, profession, or occupation that may be  
performed under the license type sought or held.

18 (c) For purposes of subdivision (a), substantially related crimes, professional  
19 misconduct, or acts shall include, but are not limited to, those which:

20 (1) Violate or attempt to violate, directly or indirectly, or to aid, abet or  
21 conspire to violate, any provision of law of this state, or any other jurisdiction,  
governing the practice of pharmacy.

22 (2) Violate or attempt to violate, directly or indirectly, or to aid, abet or  
23 conspire to violate, any provision of Chapter 13 (commencing with Section 801 ) of  
Title 21 of the United States Code regulating controlled substances or any law of this  
state, or any other jurisdiction, relating to controlled substances or dangerous drugs.

24 (3) Violate or attempt to violate, directly or indirectly, or to aid, abet or  
25 conspire to violate, any provision of law of this state, or any other jurisdiction,  
relating to government provided or government supported healthcare.

26 (4) Involve dishonesty, fraud, deceit, or corruption related to money, items,  
27 documents, or personal information.

28 (5) Involve a conviction for driving under the influence of drugs or alcohol.

1 **COST RECOVERY**

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

6 10. **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

7 “Midazolam (Versed)” is a water soluble benzodiazepine Schedule IV controlled substance  
8 as defined in Health and Safety Code section 11057, subdivision (d)(21) and a dangerous drug  
9 according to Business and Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Convictions of Substantially Related Crimes)**

12 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
13 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
14 Respondent was convicted of crimes substantially related to the qualifications, functions or duties  
15 of a pharmacy technician, as follows:

16 a. On or about April 13, 2023, after pleading guilty, Respondent was convicted of one  
17 felony count of violating Vehicle Code section 23153, subdivision (b) [driving while having  
18 0.08% or more, by weight, of alcohol in her blood: causing bodily injury] in the criminal  
19 proceeding entitled *The People of the State of California v. Cyndi Irene Baldenegro* (Super. Ct.  
20 San Bernardino County, 2023, No. FSB20001199). The court sentenced Respondent to serve 16  
21 months in prison. The circumstances surrounding the conviction are that on or about April 11,  
22 2020, police officers responded to a report of a traffic collision where a driver was observed  
23 throwing alcoholic beverage cans outside of the car window before fleeing the scene. Upon  
24 arrival, officers determined that Respondent was the driver and she was detained. Respondent was  
25 observed to be extremely intoxicated with glossy, bloodshot eyes, an unsteady gait, and slurred  
26 speech, and she was combative with officers. Respondent was unable to complete field sobriety  
27 tests due to her impaired condition and was subsequently placed under arrest.

28 ///

1           b.     On or about April 13, 2023, after pleading guilty, Respondent was convicted of one  
2 misdemeanor count of violating Vehicle Code section 23152, subdivision (g) [driving while under  
3 the influence of alcohol and drug] in the criminal proceeding entitled *The People of the State of*  
4 *California v. Cyndi Irene Baldenegro* (Super. Ct. San Bernardino County, 2023, No.  
5 MSB19016054). The court sentenced Respondent to serve 10 days in jail. The circumstances  
6 surrounding the conviction are that on or about August 25, 2019, at or around 2:33 a.m., a police  
7 officer initiated a traffic enforcement stop after observing Respondent's vehicle driving  
8 erratically. Upon contact, Respondent was uncooperative and aggressive. Due to her intoxication  
9 and altered mental state, medical aid was requested. When medical personnel determined that she  
10 should be transported to a hospital for medical treatment, she refused, and was forcefully placed  
11 on a gurney with restraints. While at the hospital, Respondent provided a blood sample at or  
12 around 4:32 a.m. that revealed a blood alcohol content level of 0.21% and the presence of  
13 Midazolam as well.

14           c.     On or about December 16, 2020, after pleading guilty, Respondent was convicted of  
15 one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under  
16 the influence of alcohol with prior], one misdemeanor count of violating Vehicle Code section  
17 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in her blood],  
18 and one misdemeanor count of violating Penal Code section 148, subdivision (a)(1)  
19 [resist/obstruct officer] in the criminal proceeding entitled *The People of the State of California v.*  
20 *Cyndi Irene Baldenegro* (Super. Ct. Orange County, 2020, No. 20HM01411). The court ordered  
21 Respondent to complete an 18 month multiple offender DUI program, serve 120 days in jail, and  
22 placed her on 5 years' formal probation, with terms and conditions. The circumstances  
23 surrounding the conviction are that on or about August 18, 2019, at or around 4:32 p.m., police  
24 officers responded to a report of a traffic collision. Upon contact, Respondent displayed  
25 symptoms of intoxication including red, watery eyes, slurred speech, an unsteady gait and she had  
26 difficulty following simple instructions. Officers could also see several empty alcoholic beverage  
27 cans in plain view in Respondent's vehicle. While at the scene, Respondent submitted to a series  
28 of field sobriety tests which she was unable to complete as indicated. During the arrest that

1 followed, Respondent was combative and injured herself while resisting officers. As a result,  
2 Respondent was transported to a hospital emergency room where she continued to be combative  
3 before she was placed in restraints. After a blood sample was taken, at or around 7:03 p.m., she  
4 was determined to have a blood alcohol content level of 0.21%.

## 5 **SECOND CAUSE FOR DISCIPLINE**

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

7 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), on  
8 the grounds of unprofessional conduct, in that on or about April 11, 2020, August 25, 2019, and  
9 August 18, 2019, Respondent used alcoholic beverages to an extent or in a manner dangerous or  
10 injurious to herself, any person, or the public. Complainant refers to, and by this reference  
11 incorporates, the allegations set forth above in paragraph 11, as though fully set forth herein.

## 12 **THIRD CAUSE FOR DISCIPLINE**

### 13 **(Alcohol Related Convictions)**

14 13. Respondent is subject to disciplinary action under section 4301, subdivision (k), on  
15 the grounds of unprofessional conduct, in that, twice on April 13, 2023 and again on December  
16 16, 2020, Respondent sustained criminal convictions involving the consumption of alcoholic  
17 beverages. Complainant refers to, and by this reference incorporates, the allegations set forth  
18 above in paragraph 11, as though fully set forth herein.

## 19 **DISCIPLINE CONSIDERATIONS**

20 14. To determine the degree of discipline, if any, to be imposed on Respondent,  
21 Complainant alleges, as follows: On or about July 16, 2015, Respondent was convicted of one  
22 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the  
23 influence of alcohol] in the criminal proceeding entitled *The People of the State of California v.*  
24 *Cyndi Irene Baldenegro* (Super. Ct. San Bernardino County, 2015, No. TVI1500839). The court  
25 sentenced Respondent to serve one day in jail and placed her on 36 months' formal probation,  
26 with terms and conditions.

27 ///

28 ///

**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 78282, issued to Cyndi Irene Baldenegro;
2. Ordering Cyndi Irene Baldenegro 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: September 25, 2023

Sodergren,  
Anne@DCA

Digitally signed by Sodergren,  
Anne@DCA  
Date: 2023.09.25 13:54:05 -07'00'

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

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