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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. 7708

13 **JEFFREY MARCUS SIBAYAN**
14 7621 Muschetto Ct.
Citrus Heights, CA 95621

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Pharmacy Technician license No. TCH 174379**

16 Respondent.

17
18 **FINDINGS OF FACT**

19 1. On or about February 19, 2024, Complainant Anne Sodergren, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board),
21 filed Accusation No. 7708 against Jeffrey Marcus Sibayan (Respondent) before the Board of
22 Pharmacy. (Accusation attached as Exhibit A.)

23 2. On or about September 20, 2019, the Board issued Pharmacy Technician license No.
24 TCH 174379 to Respondent. The Pharmacy Technician license expired on January 31, 2023, and
25 has not been renewed.

26 3. On or about February 22, 2024, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 7708, Statement to Respondent, Notice of Defense, Request
28 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 4100, is required to be reported and maintained with the Board. Respondent's address of
3 record was and is: 7621 Muschetto Ct. Citrus Heights, CA 95621.

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

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

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

13 6. The Board takes official notice of its records and the fact that Respondent failed to
14 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
15 waived his right to a hearing on the merits of Accusation No. 7708.

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

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

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
24 finds that the charges and allegations in Accusation No. 7708, are separately and severally, found
25 to be true and correct by clear and convincing evidence.

26 9. The Board finds that the actual costs for Investigation and Enforcement are \$2,506.25
27 as of August 21, 2024.

28 **DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent Jeffrey Marcus Sibayan has
subjected his Pharmacy Technician license No. TCH 174379 to discipline.

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

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician's license based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

- a. A violation of Code sections 490 and 4301 subdivision (l), in that on or about July 31, 2023, Respondent was convicted of a violation of Vehicle Code section 23152 subdivision (f), Driving a vehicle while under the influence of any drug;
- b. A violation of Code section 4301 subdivision (h) in that on or about September 27, 2022, Respondent administered to himself and used any controlled substance or any dangerous drug, including methadone, fentanyl, oxycodone, alprazolam, diazepam, lorazepam, nordiazepam, and temazepam, to the extent or in a manner as to be dangerous or injurious to himself and to others; and
- c. A violation of Code section 4060 and 4301 subdivision (j) in that on or about July 23, 2023, Respondent possessed Alprazolam, also known as Xanax, a controlled substance, without a valid prescription.

ORDER

IT IS SO ORDERED that Pharmacy Technician license No. TCH 174379, issued to Respondent Jeffrey Marcus Sibayan, is revoked.

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

This Decision shall become effective at 5:00 p.m. on November 6, 2024.

It is so ORDERED on October 7, 2024.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Seung W. Oh, Pharm.D., Board President

Exhibit A

Accusation

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 7708

14 **JEFFREY MARCUS SIBAYAN**
7621 Muschetto Ct.
15 Citrus Heights, CA 95621

ACCUSATION

16 **Pharmacy Technician No. TCH 174379**

17 Respondent.
18

19 **PARTIES**

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

22 2. On or about September 20, 2019, the Board of Pharmacy issued Pharmacy Technician
23 Number TCH 174379 to Jeffrey Marcus Sibayan (Respondent). The Pharmacy Technician
24 expired on January 31, 2023, and has not been 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. Section 4300 of the Code states:

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

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

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

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

8 (4) Revoking his or her license.

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

 ...

11 (e) The proceedings under this article shall be conducted in accordance with
12 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
13 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.

14 5. Code section 4300.1 states:

15 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
16 operation of law or by order or decision of the board or a court of law, the placement of a
17 license on a retired status, or the voluntary surrender of a license by a licensee shall not
18 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.

19 **STATUTORY AND REGULATORY PROVISIONS**

20 6. Section 490 of the Code states:

21 (a) In addition to any other action that a board is permitted to take against a
22 licensee, a board may suspend or revoke a license on the ground that the licensee has
23 been convicted of a crime, if the crime is substantially related to the qualifications,
 functions, or duties of the business or profession for which the license was issued.

24 (b) Notwithstanding any other provision of law, a board may exercise any
25 authority to discipline a licensee for conviction of a crime that is independent of the
26 authority granted under subdivision (a) only if the crime is substantially related to the
 qualifications, functions, or duties of the business or profession for which the
 licensee's license was issued.

27 (c) A conviction within the meaning of this section means a plea or verdict of
28 guilty or a conviction following a plea of nolo contendere. Any action that a board is
 permitted to take following the establishment of a conviction may be taken when the
 time for appeal has elapsed, or the judgment of conviction has been affirmed on

1 appeal, or when an order granting probation is made suspending the imposition of
2 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
the Penal Code.

3 (d) The Legislature hereby finds and declares that the application of this section
4 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
5 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
6 number of statutes and regulations in question, resulting in potential harm to the
7 consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

8 7. Section 493 of the Code states:

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

13 . . .

14 8. Section 4022 of the Code states

15 Dangerous drug or dangerous device means any drug or device unsafe for
16 self-use in humans or animals, and includes the following:

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

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

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

22 9. Section 4060 of the Code states:

23 No person shall possess any controlled substance, except that furnished to a
24 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
25 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
26 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
shall not apply to the possession of any controlled substance by a manufacturer,
28 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or

1 physician assistant, when in stock in containers correctly labeled with the name and
2 address of the supplier or producer.

...

3 10. Section 4301 of the Code states:

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

...

7 (h) The administering to oneself, of any controlled substance, or the use of any
8 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
9 dangerous or injurious to oneself, to a person holding a license under this chapter, or
10 to any other person or to the public, or to the extent that the use impairs the ability of
11 the person to conduct with safety to the public the practice authorized by the license.

...

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

...

14 (l) The conviction of a crime substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. The record of conviction of a
16 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
17 States Code regulating controlled substances or of a violation of the statutes of this
18 state regulating controlled substances or dangerous drugs shall be conclusive
19 evidence of unprofessional conduct. In all other cases, the record of conviction shall
20 be conclusive evidence only of the fact that the conviction occurred. The board may
21 inquire into the circumstances surrounding the commission of the crime, in order to
22 fix the degree of discipline or, in the case of a conviction not involving controlled
23 substances or dangerous drugs, to determine if the conviction is of an offense
24 substantially related to the qualifications, functions, and duties of a licensee under this
25 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
26 contendere is deemed to be a conviction within the meaning of this provision.

...

27 COSTS

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

DEFINITIONS

12. **Methadone** is a synthetic opioid that is used to treat chronic pain. It is a Schedule II
Controlled Substance and is a dangerous drug.

13. **Fentanyl** is a potent synthetic opioid that is used primarily as an analgesic and as a
sedative. It is a Schedule II Controlled Substance and is a dangerous drug.

14. **Oxycodone** is a semi-synthetic opioid that is used medically for treatment of moderate to severe pain. It is a Schedule II Controlled Substance and is a dangerous drug.

15. **Alprazolam**, also known as *Xanax*, is a fast-acting, potent tranquilizer of moderate duration, most commonly used in management of anxiety disorders. It is a Schedule IV Controlled Substance and is a dangerous drug.

16. **Diazepam**, also known as *Valium*, is a medicine of the benzodiazepine family. It is commonly used to treat a range of conditions, including anxiety, muscle spasms, insomnia, and restless legs syndrome. It is a Schedule IV Controlled Substance and is a dangerous drug.

17. **Lorazepam**, also known as Ativan, is a medicine of the benzodiazepine family. It is used to treat anxiety. It is a Schedule IV Controlled Substance and is a dangerous drug.

18. **Nordiazepam** is a Benzodiazepine derivative that is used as a sedative and to treat anxiety. It is a Schedule IV Controlled Substance and is a dangerous drug.

19. **Temazepam** is a Benzodiazepine derivative that is used to treat severe or debilitating insomnia. It is a Schedule IV Controlled Substance and is a dangerous drug.

FACTUAL ALLEGATIONS

20. On September 27, 2022, Defendant Sibayan was arrested for driving under the influence of drugs, as well as possession of prescription medication without a prescription. A blood sample taken from Defendant Sibayan at the time of his arrest confirmed the presence of numerous controlled substances and prescriptions medications, including methadone, fentanyl, oxycodone, alprazolam, diazepam, lorazepam, nordiazepam, and temazepam, and the possible presence of oxymorphone. At the time of his arrest, Defendant Sibayan was also found to be in possession of a baggie containing 35 Xanax pills, for which Defendant Sibayan admitted he did not possess a prescription.

21. On or about July 31, 2023, in the case entitled *The People of the State of California vs. Jeffrey Marcus Sibayan, Jr.*, Sacramento County Superior Court case no. 22MI020513, Respondent was convicted of a violation of Vehicle Code section 23152 subdivision (f), Driving a vehicle while under the influence of any drug. Respondent was placed on 3 years' probation and ordered to serve 34 days in the county jail.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime)

3 22. Respondent is subject to disciplinary action under Code sections 490 and 4301
4 subdivision (l), in that on or about July 31, 2023, Respondent was convicted of a violation of
5 Vehicle Code section 23152 subdivision (f), Driving a vehicle while under the influence of any
6 drug, as set forth more fully in paragraphs 19 and 20 above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Dangerous Use of Drugs)

9 23. Respondent is subject to disciplinary action under Code section 4301 subdivision (h)
10 in that on or about September 27, 2022, Respondent administered to himself and used any
11 controlled substance or any dangerous drug, including methadone, fentanyl, oxycodone,
12 alprazolam, diazepam, lorazepam, nordiazepam, and temazepam, to the extent or in a manner as
13 to be dangerous or injurious to himself and to others, as set forth more fully in paragraphs 19 and
14 20 above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Possession of a Controlled Substance)

17 24. Respondent is subject to disciplinary action under Code section 4060 and 4301
18 subdivision (j) in that on or about July 23, 2023, Respondent possessed Alprazolam, also known
19 as Xanax, a controlled substance, without a valid prescription, as set forth more fully in paragraph
20 19 above.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacy Technician Number TCH 174379, issued to
25 Jeffrey Marcus Sibayan;

26 2. Ordering Jeffrey Marcus Sibayan to pay the Board of Pharmacy the reasonable costs
27 of the investigation and enforcement of this case, pursuant to Business and Professions Code
28 section 125.3; and,

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

DATED: 2/19/2024

Sodergren,
Anne@DCA

Digitally signed by Sodergren,
Anne@DCA
Date: 2024.02.19 14:02:07 -08'00'

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

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