



**California State Board of Pharmacy**  
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Business, Consumer Services and Housing Agency  
 Department of Consumer Affairs  
 Gavin Newsom, Governor



**APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE**

**PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES:**

Name of Licensee: jose barrientos	Case No. 7832
Address of Record: 1907 south burnside ave <hr/> Los Angeles, CA 90016	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 7832, I hereby request to surrender my pharmacy technician license, License No. 40416. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.



Applicant's Signature

04/15/2026

Date

Jose Barrientos

Applicant's Printed Name

Sodergren,

Anne@DCA

Executive Officer's Approval

Digitally signed by  
Sodergren, Anne@DCA

Date: 2026.04.26

20:13:47 -07'00'

40416

Applicant's License Number

Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 518-3100, 2720 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

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

**JOSE ROBERTO BARRIENTOS,**

**Pharmacy Technician License No. TCH 40416,**

**Respondent.**

**Case No. 7832**

**OAH No. 2024100244**

**DECISION AFTER REJECTION**

Jennifer M. Russell, Senior Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 3, 2024. Elaine Yan, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs (Department), State of California. Respondent Jose Roberto Barrientos represented himself.

Testimony and documents were received in evidence. Pursuant to a Post-Hearing Order, the record remained open for respondent's submission of certain documents and complainant's objections, if any. Respondent submitted a record of

Decision After Rejection  
Case No. 7832

attendance at Alcoholics' Anonymous (AA) meetings, which is marked for identification as Exhibit A; a character reference letter, which is marked for identification as Exhibit B; and a Certificate of Completion in connection with a six-month, first-offender alcohol education program, which is marked for identification as Exhibit C. Exhibits A, B, and C are received in evidence over complainant's objections set forth in a December 19, 2024 Objection to Respondent's Evidence, which in turn is marked for identification only as Exhibit 11. The record closed and the matter was submitted for decision on December 19, 2024.

The ALJ issued a Proposed Decision on January 17, 2025. On April 15, 2025, 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 and administrative record of the hearing, and thereafter issued an Order setting June 11, 2025, as the date for the submission of written argument with no new evidence allowed to be presented. 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. As set forth herein, the Board agrees that the discipline imposed by the ALJ is supported by the facts, except that the Board finds the imposition of 90 days actual suspension excessive and unnecessary for public protection. Further, while the Board finds the ALJ's reasoning sound and persuasive, it has determined that certain modifications to the Proposed Decision are warranted for consistency with the Board's Disciplinary Guidelines and to correct certain nonprejudicial errors and omissions that the Board noted in the Proposed Decision.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On December 12, 2001, the Board issued Pharmacy Technician Registration number TCH 40416 to respondent. The registration expires on August 31, 2025, unless renewed.
2. On July 28, 2024, complainant filed the Accusation alleging respondent engaged in unprofessional conduct by using alcohol in a dangerous manner and consequently incurring a misdemeanor conviction for a crime substantially related to his qualifications, functions, or duties as a pharmacy technician.
3. On August 16, 2024, respondent filed a Notice of Defense requesting a hearing on the merits of the Accusation.
4. All jurisdictional requirements are satisfied.

### **Respondent's Background and Disciplinary History**

5. Respondent holds an associate degree from Los Angeles Community College. He received his training as a pharmacy technician through American Career College.
6. Respondent's career as a pharmacy technician includes working 14 years at a Rite Aid pharmacy in Beverly Hills, California. According to a pharmacist knowledgeable about respondent's work at that pharmacy, respondent was resolutely professional, courteous, and caring when attending to patients' needs and concerns. The pharmacist offers the following appraisal of respondent's work in the pharmacy at that Beverly Hills Rite Aid:

[Respondent's] main station was at the drop off window where patients are eager to be taken care of and quite impatient. In Beverly Hills we have to deal with people who are particularly exigent and it requires mental strength and skills to meet their demands. Aside from being an excellent technician, [respondent] showed outstanding customer service; quick and efficient, with a big smile, he always managed to make their trip to the pharmacy smooth and positive, and willing to provide the extra care especially for the elderly. Last but not least, in our busy store with 700 Rxs average a day, teamwork is important and [respondent] always showed a great attitude, professional, courteous, and caring, ready to help a cashier in busy moments and having a knack to dedramatize complicated situations. [Respondent] has been an asset to this pharmacy and the workflow was in good order. His good mood was contagious and we all remember his witty comments which made a stressful environment a better working place.

(Exh. B.)

7. For the past nine years, the Los Angeles LGBT Center's Department of Health Services has employed respondent as a Pharmacy Financial Coordinator. In that position, respondent is responsible for, among other things, insurance prior authorizations, denials, and appeals; insurance and pharmaceutical billing; account receivable collection, reconciliation; and research related to client discrepancies.

8. Respondent's registration has no history of prior discipline.

Decision After Rejection  
Case No. 7832

## Cause Alleged for Discipline

9. On November 27, 2023, in *People of the State of California v. Jose Barrientos* (Super. Ct. Los Angeles County, 2023, No. 3TR02385), respondent was convicted, on his nolo contendere plea, of driving under the influence of alcohol (DUI), in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence and placed respondent on three years' summary probation with terms and conditions requiring respondent, among other things, to serve two days in Los Angeles County Jail (credit for two days actually served); complete an AB762 (a six-month DUI First Offender Program for those found guilty of a DUI for the first time within a 10-year period); and pay fees and fines.

10. The facts and circumstances resulting in respondent's conviction occurred on December 4, 2022. Respondent went hiking. During the hike, he drank three beers. Following the hike, respondent drove his car. Patrolling officers from the Palos Verdes Estates Police Department (PVEPD) observed respondent failed to stop at a posted stop sign. The officers conducted a traffic stop. As one of the officers approached respondent's vehicle, the officer saw an open Lagunitas IPA 24-ounce beer can in a cupholder. The officer instructed respondent to roll down the driver-side window. When respondent did so, the officer smelled an odor of alcohol emitting from respondent's person. The officer also observed respondent's eyes were red and watery and respondent slurred his speech. In response to the officer's initial inquiry, respondent told the officer he drank one beer. After further inquiry, respondent stated he drank three beers. The officer administered the Horizontal Gaze Nystagmus Test and noticed respondent's eye movement lacked a smooth pursuit of an object slowly

moving side to side. Respondent refused additional field sobriety tests. The PVEPD officers arrested respondent for DUI. Pursuant to a warrant, the PVEPD subsequently obtained a sample of respondent's blood for testing. The sample had a blood alcohol concentration level measuring 0.18 percent.

11. As discussed in Legal Conclusions 6, 13, and 14, the ALJ found, and the Board agrees, that respondent's December 4, 2022 misconduct and resulting November 27, 2023 misdemeanor criminal conviction are substantially related to the qualifications, functions, or duties of a pharmacy technician.

### **Factors in Aggravation, Mitigation, and Rehabilitation**

12. In aggravation, on June 25, 2004, respondent drove a motor vehicle with a blood alcohol concentration level measuring 0.17 percent. Consequently, on July 23, 2004, in *People of the State of California v. Jose Barrientos* (Super. Ct. Los Angeles County., 2004, No. 4MT06649), respondent was convicted on his nolo contendere plea of DUI, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence, and placed respondent on summary probation for three years with terms and conditions requiring respondent, among other things, to obey all laws, serve 13 days in Los Angeles County Jail (less credit for one day served); perform 12 days of community service with Caltrans; enroll in a three-month, first-offender alcohol and drug education and counseling program; and not operate a motor vehicle with any measurable amount of alcohol in his blood system.

13. In further aggravation, on September 5, 2008, respondent drove a motor vehicle with a blood alcohol concentration level measuring 0.12 percent. Consequently, on November 12, 2008, in *People of the State of California v. Jose Barrientos* (Super. Ct. Los Angeles County., 2023, No. 8MP12785), respondent was convicted on his nolo

contendere plea of DUI, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence, and placed respondent on summary probation for three years with terms and conditions requiring respondent, among other things, to obey all laws; serve 10 days in Los Angeles County Jail (or in lieu thereof perform 13 days of community service with CalTrans); complete a three- month, first-offender alcohol and drug education and counseling program; and attend 52 AA meetings at a rate of two times per week in addition to the AA meetings required as a part of the alcohol education program. The court advised respondent that being under the influence of alcohol or drugs, or both, impairs his ability to operate a motor vehicle safely and it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. The court further advised respondent that if he continued to drive while under the influence of alcohol or drugs, or both, and as a result of his driving someone is killed, he can be charged with murder.

14. At hearing, respondent apologized for his December 4, 2022 misconduct stating, "I made a mistake. I should never have done what I did. I'm responsible for that. I'm ashamed. I should not have done that; my brother is a detective. It was a bad day. I'm sorry."

15. Respondent testified, "I never go to work inebriated because I know my responsibility is to take care of other people." Respondent additionally testified, "I tried to quit once or twice. I went one or two years without drinking." Respondent claimed, "I do not have an alcohol abuse problem."

16. On September 9, 2024, respondent completed the court-ordered six-month, first-offender alcohol education program, which included respondent's attendance at 13 AA meetings. (Exhs. A and C.)

## Complainant's Expert's Opinion

17. Board Inspector Scott Huhn, Pharm.D., is complainant's designated expert in this matter. Inspector Huhn explained the functions and duties of a pharmacy technician are to provide crucial assistance to pharmacists to ensure the safe and effective delivery of dangerous drugs and controlled substances for therapeutic purposes to the public in accordance with provisions of the Pharmacy Law, Business and Professions Code section 4000 et seq., discussed in Legal Conclusion 9. Inspector Huhn underscored honesty, trustworthiness, and good judgment as "key" qualifications for properly discharging a pharmacy technician's duties.

18. Inspector Huhn opined respondent's record of three DUI convictions "raise[s] questions for the Board whether he is emotionally stable for the job." Inspector Huhn opined respondent did not show good judgment. Inspector Huhn testified that "good judgment is needed integrating new information with existing knowledge about patients" and without good judgment "HR issues arise" and it "could lead to medication errors and patient harm." Inspector Huhn further testified, "A tech receives a lot of confidential information that has to remain secret..... Good judgment is needed because the tech is handling protected health information and having conversations with nursing." Focusing on respondent's December 4, 2022 DUI, Inspector Huhn noted respondent "said one beer, then three beers" when responding to a PVEPD officer's inquiry about how much alcohol was consumed that day and opined respondent's response "raises concern for the Board because some deception was going on there." Inspector Huhn additionally opined respondent's "refusal to do the field sobriety test showed no respect for authority."

## **Costs of Enforcement**

19. The Board incurred costs of enforcement totaling \$6,556.26. These costs are reasonable pursuant to Business and Professions Code (Code) section 125.3.

20. Respondent testified, "I do not have that money but I can make payments."

## **LEGAL CONCLUSIONS**

### **Applicable Law**

1. The purpose of this administrative proceeding is not to impose additional punishment on respondent. (See *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Appropriate and significant criminal consequences have been imposed on respondent. (See Factual Finding 9.) The purpose of this administrative proceeding is to determine respondent's fitness or qualification to perform the functions and duties of a pharmacy technician consistent with the public health, safety, or welfare. (Accord, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856 [favorably citing certain State Bar Court precedent for the proposition that the public, among other interests, must be protected from those who do not measure up to their responsibilities].)

2. Thus, the Pharmacy Law authorizes discipline of any holder of a pharmacy technician registration who is guilty of unprofessional conduct. (Bus. & Prof. Code, §§ 490, 4300, and 4301.)

3. It is unprofessional conduct for the holder of a pharmacy technician registration to administer to himself or herself alcoholic beverages to the extent or in a

manner as to be dangerous or injurious to himself or herself or to the extent that the use impairs the ability to conduct with safety to the public the practice authorized by the registration. (Bus. & Prof. Code, § 4301, subd. (h).)

4. It is unprofessional conduct for the holder of a pharmacy technician registration to be convicted of more than one misdemeanor following the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances. (Bus. & Prof. Code, § 4301, subd. (k).)

5. 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. (Bus. & Prof. Code, § 4301, subd. (j).)

6. A crime, unprofessional misconduct, or act is substantially related to the qualifications, functions or duties of a registered pharmacy technician if to a substantial degree it evidences a present or potential unfitness to perform the functions authorized by licensure in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770, subd. (a).) Substantially related crimes, professional misconduct, or acts include, but are not limited to, those which involve a conviction for driving under the influence of alcohol. (Cal. Code Regs., tit. 16, § 1770, subd. (c)(5).)

7. 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. (Bus. & Prof. Code, §§ 493 and 4301, subd. (j).)

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## Standard and Burden of Proof

8. A pharmacy technician registration is an occupational license. To obtain a registration, an applicant must complete 240 hours of instruction covering, among other things, “the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy.” (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance*, *supra*, 135 Cal.App.3d at p. 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

9. The Pharmacy Law makes plain that a pharmacy technician performs nondiscretionary tasks not requiring the type of professional judgment exercised by a pharmacist. “A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician’s nondiscretionary tasks may include “(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging.” (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized “to perform any act requiring the exercise of professional judgment by a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, §1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient’s medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit.

16, § 1793.1.)

10. 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 and 500.)

11. "'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, 329.)

### **Cause Exists to Discipline**

12. On December 4, 2022, for a third time, respondent consumed alcoholic beverages to an extent that was dangerous to himself and the public. He drove a motor vehicle on the public roadways with a blood alcohol concentration level in excess of the baseline measurement of intoxication. As a result, on November 27, 2023, respondent was convicted of a misdemeanor crime involving his dangerous consumption of alcohol.

13. Respondent's December 4, 2022 misconduct and resulting November 27, 2023 misdemeanor criminal conviction are substantially related to the qualifications, functions, or duties of a pharmacy technician. Respondent demonstrated poor judgment, a reckless disregard for the health, safety, or welfare of himself and members of the public, and indifference for legal prohibitions against drunk driving

Decision After Rejection  
Case No. 7832

when he operated a vehicle while intoxicated. As acknowledged in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770:

Alcohol consumption quickly affects normal driving ability and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance[.] Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

14. Respondent's misconduct and conviction potentially undermine patients and prescribers' confidence in his integrity performing technician tasks and, derivatively, confidence in the ability of pharmacists and intern pharmacists, whom respondent may assist, to ensure the safe, effective delivery of pharmaceutical care and services. This is so because, as explained in the Board's *A Manual of Disciplinary Guidelines and Model of Disciplinary Orders* (Rev. 4/2024) (*Disciplinary Guidelines*), pharmacy technicians provide crucial assistance in the delivery of pharmaceutical care:

Pharmacists and intern pharmacists are patient advocates and vital members of the clinical care team who provide pharmaceutical care and exercise clinical judgment for their patients. They also exercise critical vigilance and control

over medication stocks, drug inventories, and quality assurance protocols. Pharmacy technicians provide crucial assistance to pharmacists and intern pharmacists in all of their pharmacy tasks .....The board recognizes the importance of ensuring the safe and effective delivery of dangerous drugs and controlled substances for therapeutic purposes. At the same time and given the historical and current abuse and diversion of drugs, particularly controlled substances, the board believes there should be no tolerance for licensees who traffic in drugs or who, in the absence of appropriate evidence of rehabilitation, personally abuse drugs or alcohol.

(Disciplinary Guidelines at p. 1.)

15. In sum, respondent violated the law when comporting himself in a law abiding manner is important for engendering public trust as he executes the functions and duties of a pharmacy technician. His December 4, 2022 misconduct and November 27, 2023 criminal conviction evince a present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Respondent's unprofessionalism merits discipline of his registration. (See e.g., *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, indicating a showing that a licensee engaged in statutorily enumerated conduct provides a basis for discipline.)

16. The ALJ found, and the Board agrees, that complainant proved by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300,

Decision After Rejection  
Case No. 7832

and 4301, subdivision (j), in conjunction with California Code of Regulations, title 16, section 1770. As discussed in Factual Finding 9, Respondent engaged in unprofessional conduct by incurring a conviction for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

17. The ALJ found, and the Board agrees, that complainant proved by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300, and 4301, subdivision (k). As discussed in Factual Finding 9, respondent engaged in unprofessional conduct by sustaining a third criminal conviction involving the consumption of alcohol.

18. The ALJ found, and the Board agrees, that complainant proved by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300, and 4301, subdivision (h). As discussed in Factual Finding 10, respondent engaged in unprofessional conduct by consuming alcoholic beverages to an extent that was dangerous to himself and others.

### **Imposition of Discipline**

19. A determination cause exists to discipline respondent's pharmacy technician registration does not end the analysis. Conduct underlying cause for discipline must affect respondent's present or potential unfitness to provide assistance to pharmacists and intern pharmacists in a manner consistent with the public health, safety, or welfare. (See *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1139.) "[A] statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to

practice that profession.'" (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 788.)

20. Cause to discipline respondent's pharmacy technician registration may be overcome with a demonstration of rehabilitation. Respondent bears the burden of presenting substantial persuasive evidence of his rehabilitation. (Evid. Code, §§ 115 and 500.)

21. The *Disciplinary Guidelines* lists the following as examples of appropriate evidence demonstrating rehabilitative efforts and competency:

- a. Recent, dated, written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice relevant to the disciplinary proceeding, including the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by Board staff.
- b. Recent, dated, letters from licensed treatment providers regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a diagnosis of the condition and current state of recovery, and the basis for determining rehabilitation. Such letters and report will be subject to verification by Board staff.

Decision After Rejection  
Case No. 7832

- c. Recent, dated, letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.) Such analyses and reports will be subject to verification by Board staff.
- d. Recent, dated, laboratory analyses or drug screen reports confirming abstinence from drugs and alcohol. Such analyses and reports will be subject to verification by Board staff.
- e. Recent, dated physical examination/assessment report(s) by a California licensed health care practitioner, confirming the absence of any physical impairment that would prohibit the respondent from practicing safely consistent with the health care practitioner's scope of practice. Such reports will be subject to verification by Board staff.
- f. Recent, dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by Board staff.

- g. Recent, dated, letters from persons familiar with respondent in either a personal or professional capacity regarding their knowledge of: the respondent' character; the respondent's rehabilitation, if any; the conduct of which the respondent is accused; or any other pertinent facts that would enable the Board to better decide the case. Such letters must be signed under penalty of perjury and will be subject to verification by Board staff.

(Disciplinary Guidelines at pp. 4-5.)

22. The *Disciplinary Guidelines* additionally lists factors for consideration when determining penalties. Those factors include actual or potential harm to the public or any consumer; prior disciplinary record; the number and variety of current violations; nature and severity of the act (s), offense(s), or crime(s) under consideration; mitigating evidence; rehabilitation evidence; compliance with sentence and probationary terms; over all criminal record; time passed since the act(s) or offense(s); and Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards) implemented by the Department pursuant to Business and Professions Code section 315. (See Disciplinary Guidelines at p. 3.)

23. Respondent offered an appraisal of his work at his previous place of employment, Rite Aid, from a pharmacist knowledgeable about his competence as a pharmacy technician. The pharmacist, however, does not disclose any knowledge about respondent's DUI misconduct. The pharmacist's appraisal is not sworn under penalty of perjury. Respondent submitted evidence of his successful completion of a

court-ordered three-month, first offender program; however, he offered no letters from counselors describing or evaluating his participation in that program. There is no diagnosis by a counselor, therapist, or psychologist to establish whether respondent is a substance abuser requiring him to undergo regular and routine physical examination or assessment or laboratory analysis or drug screening to confirm abstention from drugs or alcohol. Respondent's three-year, court-imposed summary probation concludes in 2026. There are no letters from probation officials affirming his compliance with the terms and conditions the court imposed in connection with his November 27, 2023 criminal conviction.

24. Respondent has no prior history of administrative discipline. Respondent's November 27, 2023 alcohol-related misdemeanor criminal conviction is the sole conviction alleged as grounds for disciplining respondent's pharmacy technician registration. Respondent's overall criminal record, however, includes two additional DUI convictions that he incurred on July 23, 2004 and on November 12, 2008. The 2004 DUI conviction is more than two decades old and the 2008 DUI conviction is more than one and one-half decades old. Ordinarily, with the passage of those extended periods of time, the significance of the 2004 and 2008 DUI convictions would be diminished. (See *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061.) But given respondent's more recent November 27, 2023 DUI conviction, their saliency is refreshed, especially in light of the court's prior advisement to respondent regarding the extreme danger his conduct poses to human life when he drives under the influence of alcohol. (See Factual Finding 13.) In the aggregate, these three instances of inebriated driving create a presumption of alcohol abuse, which the evidence in the record fails to rebut.

25. Respondent's DUI misconduct resulting in criminal conviction is a serious matter. As the Board's expert opined, respondent demonstrated poor personal and

professional judgment when he disregarded the law prohibiting alcohol-impaired driving and drove under the influence of alcohol. Such unprofessionalism is anathema to the responsible behavior required of Board licensees, including pharmacy technicians such as respondent. Even if respondent were not working in his licensed capacity as a pharmacy technician at the time of his dangerous use of alcohol, and therefore presented no actual or potential risk of harm to a consumer of pharmaceutical services, the Board need not wait until harm occurs in order to discipline respondent's pharmacy technician registration. (See *e.g. Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-773 discussing *In re Kelley* (1990) 52 Cal.3d 487, 495-496.)

26. The ALJ found, and the Board agrees, that the totality of the evidence in the record suggests a nascent, ongoing rehabilitation. The law favors rehabilitation. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.) Imposition of a level of discipline appropriate to ensure public protection as respondent proceeds with his rehabilitation efforts is warranted. (See *Griffiths, supra*, 96 Cal.App.4th at pp. 772-773 [noting the preventative functions of license discipline, main purpose of which is protection of the public, include the improvement and rehabilitation of licensees].)

27. In the *Disciplinary Guidelines*, the Board identifies four categories of violations and associated recommended minimum and maximum penalties. The categories of violations are arranged in ascending order from the least serious (Category I) to the most serious (Category IV). The *Disciplinary Guidelines* instructs, "For pharmacy technicians and designated representatives, the board believes an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and if revocation is not imposed that a minimum Category III level of discipline should be imposed." (*Disciplinary Guidelines* at p. 6.) Category III level of discipline is recommended for, among other things, "most criminal convictions

involving alcohol.” (*Id.* at p. 9.) The *Disciplinary Guidelines* states, “Violations in this category may include: [¶] . . . [¶] violation(s) of laws governing . . . alcohol, including repeat or serious . . . abuse[.]” (*Ibid.*)

28. The ALJ further found that the totality of the evidence in the record further dictates imposition of the minimum Category III level of discipline, which according to the *Disciplinary Guidelines* is a stayed revocation, 90 days actual suspension, and probation for a term of five years with standard terms and conditions and optional terms and conditions as appropriate. (See *Disciplinary Guidelines* at p. 8.) The Board agrees, except that under the circumstances, the Board finds it unduly punitive, and unnecessary for public protection, to impose a period of actual suspension.

### **Cost Recovery Award**

29. A registrant found to have violated the Pharmacy Law may be directed to pay a sum not exceeding the reasonable costs of investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

30. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, 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.” (*Id.*) The Board, in imposing costs in such situations, must consider the registrant’s subjective good faith belief in the merits of his position and whether the registrant has raised a colorable defense. The Board must also consider the registrant’s ability to make payment.

31. Having considered the *Zuckerman* factors, including respondent's testimony affirming his ability to pay a cost recovery award pursuant to a payment plan as discussed in Factual Finding 20, the ALJ determined that the Board shall recover its costs of enforcement totaling \$6,556.26. Under section 125.3 of the Code, only an ALJ can order costs to be paid. Accordingly, the costs of \$6,556.26 ordered by the ALJ are imposed.

## **ORDER**

Pharmacy Technician Registration number TCH 40416, issued to Jose Roberto Barrientos (respondent), is revoked; however, revocation of the registration is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

It is further ordered that any new license(s) issued while respondent remains on probation shall also be placed on probation, subject to the same terms and conditions applicable to respondent's pharmacy technician registration.

### **1. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy- two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint, information, or indictment for violation of any state and federal 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.

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. 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 participate as directed for interviews with the Board, at such intervals and locations as are determined by the Board. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board 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 their 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 7832 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of each of their employer(s), and the name(s), telephone number(s), and email address(es) of all of their 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 and the last day worked. Respondent shall sign and return to the Board a written consent authorizing the Board 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, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) their direct supervisor, (b) their pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of their employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7832, and the terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the Board in writing within fifteen (15) days of the change acknowledging that they have read the decision in case number 7832 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 7832 and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that they have read the decision in case number 7832, and the terms and conditions

imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

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

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

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

Respondent shall further notify the Board as directed within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the Board of any change in employer, name, address, email address, or phone number, within 10 days of the change, 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 \$6,556.26. Respondent shall be permitted to pay these costs pursuant to a payment plan approved by the Board, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from this schedule

Decision After Rejection  
Case No. 7832

absent prior written approval by the Board. 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. 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 their registration, including any indicia of licensure issued by the Board, along with a request to surrender the registration. The Board shall have the discretion whether to accept the surrender or take any other

Decision After Rejection  
Case No. 7832

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 their pocket and/or wall license, including any indicia of licensure not previously provided to the Board within ten (10) days of notification by the Board that the surrender is accepted if not already provided. Respondent may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

## **11. Certification Prior to Resuming Work**

Respondent shall be suspended, and shall not work as a pharmacy technician, until they have been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), submitted proof of certification to the Board, and been notified by the Board that they may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not exercise any of the privileges conveyed by the Board or assist any licensee of the Board. Respondent shall not have access to or control the ordering, distributing, manufacturing, or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of any Board-licensed premises.

Failure to comply with any such suspension 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.

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 ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the Board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended

pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The Board 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 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 indicating successful completion of probation, respondent's pharmacy technician registration will be fully restored.

### **15. Clinical Diagnostic Evaluation**

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter if required by the Board, respondent shall undergo, at their own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the Board. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the Board may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter or email within three (3) working days. Upon notification from the Board of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board that practice may resume.

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**

Decision After Rejection  
Case No. 7832

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 they are 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. Respondent shall sign an acknowledgment confirming receipt of a list of examples of prohibited substances.

## **17. Drug and Alcohol Testing**

Respondent, at their own expense, shall participate in testing as directed by the Board 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. All testing must be pursuant to an observed testing protocol, unless respondent is informed otherwise in writing by the Board. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the Board.

By no later than thirty (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;

Decision After Rejection  
Case No. 7832

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, 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 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 of 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 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 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 ten (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 they 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 refrain from alcohol; 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 drug that contains alcohol, without a prescription, 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, or drug that contains alcohol, without a valid prescription, 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 shall inform respondent of the suspension and inform them 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 any Board-licensed premises where dangerous drugs and/or dangerous devices or controlled substances are maintained. Respondent shall not exercise any of the privileges conveyed by the Board 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 any Board-licensed premises.

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.

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

Within thirty (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. Respondent must attend the number of group meetings per week or month directed by the Board, 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.

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This Decision shall become effective at 5:00 p.m. on August 6, 2025.

It is so ORDERED on July 7, 2025.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in cursive script, appearing to read "Seung W. Oh".

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:**

**JOSE R BARRIENTOS, Respondent**

**Case No. 7832**

**OAH No. 2024100244**

**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 April 15, 2025. 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 **June 11, 2025**.

It is so ORDERED on May 21, 2025.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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:**

**JOSE R BARRIENTOS, Respondent**

**Case No. 7832**

**OAH No. 2024100244**

**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 April 15, 2025.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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:**

**JOSE ROBERTO BARRIENTOS,**

**Pharmacy Technician License No. TCH 40416,**

**Respondent.**

**Case No. 7832**

**OAH No. 2024100244**

**PROPOSED DECISION**

Jennifer M. Russell, Senior Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 3, 2024. Elaine Yan, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs (Department), State of California. Respondent Jose Roberto Barrientos represented himself.

Testimony and documents were received in evidence. Pursuant to a Post-Hearing Order, the record remained open for respondent's submission of certain documents and complainant's objections, if any. Respondent submitted a record of

attendance at Alcoholics' Anonymous (AA) meetings, which is marked for identification as Exhibit A; a character reference letter, which is marked for identification as Exhibit B; and a Certificate of Completion in connection with a six-month, first-offender alcohol education program, which is marked for identification as Exhibit C. Exhibits A, B, and C are received in evidence over complainant's objections set forth in a December 19, 2024 Objection to Respondent's Evidence, which in turn is marked for identification only as Exhibit 11. The record closed and the matter was submitted for decision on December 19, 2024.

The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order staying revocation of respondent's registration, suspending respondent from practice as a pharmacist technician for a period of 90 days, and subjecting respondent to a five-year probationary period on terms and conditions.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On December 12, 2001, the Board issued Pharmacy Technician Registration number TCH 40416 to respondent. The registration expires on August 31, 2025, unless renewed.

2. On July 28, 2024, complainant filed the Accusation alleging respondent engaged in unprofessional conduct by using alcohol in a dangerous manner and consequently incurring a misdemeanor conviction for a crime substantially related to his qualifications, functions, or duties as a pharmacy technician.

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3. On August 16, 2024, respondent filed a Notice of Defense requesting a hearing on the merits of the Accusation.

4. All jurisdictional requirements are satisfied.

## **Respondent's Background and Disciplinary History**

5. Respondent holds an associate degree from Los Angeles Community College. He received his training as a pharmacy technician through American Career College.

6. Respondent's career as a pharmacy technician includes working 14 years at a Rite Aid pharmacy in Beverly Hills, California. According to a pharmacist knowledgeable about respondent's work at that pharmacy, respondent was resolutely professional, courteous, and caring when attending to patients' needs and concerns. The pharmacist offers the following appraisal of respondent's work in the pharmacy at that Beverly Hills Rite Aid:

[Respondent's] main station was at the drop off window where patients are eager to be taken care of and quite impatient. In Beverly hills we have to deal with people who are particularly exigent and it requires mental strength and skills to meet their demands. Aside from being an excellent technician, [respondent] showed outstanding customer service; quick and efficient, with a big smile, he always managed to make their trip to the pharmacy smooth and positive, and willing to provide the extra care especially for the elderly. Last but not least, in our busy store with 700 Rxs average a day, teamwork is important and [respondent]

always showed a great attitude, professional, courteous, and caring, ready to help a cashier in busy moments and having a knack to dedramatize complicated situations. [Respondent] has been an asset to this pharmacy and the workflow was in good order. His good mood was contagious and we all remember his witty comments which made a stressful environment a better working place.

(Exh. B.)

7. For the past nine years, the Los Angeles LGBT Center's Department of Health Services has employed respondent as a Pharmacy Financial Coordinator. In that position, respondent is responsible for, among other things, insurance prior authorizations, denials, and appeals; insurance and pharmaceutical billing; account receivable collection, reconciliation; and research related to client discrepancies.

8. Respondent's registration has no history of prior discipline.

### **Cause Alleged for Discipline**

9. On November 27, 2023, in *People of the State of California v. Jose Barrientos* (Super. Ct. Los Angeles County, 2023, No. 3TR02385), respondent was convicted, on his nolo contendere plea, of driving under the influence of alcohol (DUI), in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence and placed respondent on three years' summary probation with terms and conditions requiring respondent, among other things, to serve two days in Los Angeles County Jail (credit for two days actually served); complete an AB762 (a six-month DUI First

Offender Program for those found guilty of a DUI for the first time within a 10-year period); and pay fees and fines.

10. The facts and circumstances resulting in respondent's conviction occurred on December 4, 2022. Respondent went hiking. During the hike, he drank three beers. Following the hike, respondent drove his car. Patrolling officers from the Palos Verdes Estates Police Department (PVEPD) observed respondent failed to stop at a posted stop sign. The officers conducted a traffic stop. As one of the officers approached respondent's vehicle, the officer saw an open Lagunitas IPA 24-ounce beer can in a cupholder. The officer instructed respondent to roll down the driver-side window. When respondent did so, the officer smelled an odor of alcohol emitting from respondent's person. The officer also observed respondent's eyes were red and watery and respondent slurred his speech. In response to the officer's initial inquiry, respondent told the officer he drank one beer. After further inquiry, respondent stated he drank three beers. The officer administered the Horizontal Gaze Nystagmus Test and noticed respondent's eye movement lacked a smooth pursuit of an object slowly moving side to side. Respondent refused additional field sobriety tests. The PVEPD officers arrested respondent for DUI. Pursuant to a warrant, the PVEPD subsequently obtained a sample of respondent's blood for testing. The sample had a blood alcohol concentration level measuring 0.18 percent.

11. As discussed in Legal Conclusions 6, 13, and 14, respondent's December 4, 2022 misconduct and resulting November 27, 2023 misdemeanor criminal conviction are substantially related to the qualifications, functions, or duties of a pharmacist technician.

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## **Factors in Aggravation, Mitigation, and Rehabilitation**

12. In aggravation, on June 25, 2004, respondent drove a motor vehicle with a blood alcohol concentration level measuring 0.17 percent. Consequently, on July 23, 2004, in *People of the State of California v. Jose Barrientos* (Super. Ct. Los Angeles County., 2004, No. 4MT06649), respondent was convicted on his nolo contendere plea of DUI, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence, and placed respondent on summary probation for three years with terms and conditions requiring respondent, among other things, to obey all laws, serve 13 days in Los Angeles County Jail (less credit for one day served); perform 12 days of community service with Caltrans; enroll in a three-month, first-offender alcohol and drug education and counseling program; and not operate a motor vehicle with any measurable amount of alcohol in his blood system.

13. In further aggravation, on September 5, 2008, respondent drove a motor vehicle with a blood alcohol concentration level measuring 0.12 percent. Consequently, on November 12, 2008, in *People of the State of California v. Jose Barrientos* (Super. Ct. Los Angeles County., 2023, No. 8MP12785), respondent was convicted on his nolo contendere plea of DUI, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence, and placed respondent on summary probation for three years with terms and conditions requiring respondent, among other things, to obey all laws; serve 10 days in Los Angeles County Jail (or in lieu thereof perform 13 days of community service with CalTrans); complete a three-month, first-offender alcohol and drug education and counseling program; and attend 52 AA meetings at a rate of two times per week in addition to the AA meetings

required as a part of the alcohol education program. The court advised respondent that being under the influence of alcohol or drugs, or both, impairs his ability to operate a motor vehicle safely and it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. The court further advised respondent that if he continued to drive while under the influence of alcohol or drugs, or both, and as a result of his driving someone is killed, he can be charged with murder.

14. At hearing, respondent apologized for his December 4, 2022 misconduct stating, "I made a mistake. I should never have done what I did. I'm responsible for that. I'm ashamed. I should not have done that; my brother is a detective. It was a bad day. I'm sorry."

15. Respondent testified, "I never go to work inebriated because I know my responsibility is to take care of other people." Respondent additionally testified, "I tried to quit once or twice. I went one or two years without drinking." Respondent claimed, "I do not have an alcohol abuse problem."

16. On September 9, 2024, respondent completed the court-ordered six-month, first-offender alcohol education program, which included respondent's attendance at 13 AA meetings. (Exhs. A and C.)

### **Complainant's Expert's Opinion**

17. Board Inspector Scott Huhn, Pharm.D., is complainant's designated expert in this matter. Inspector Huhn explained the functions and duties of a pharmacist technician are to provide crucial assistance to pharmacists to ensure the safe and effective delivery of dangerous drugs and controlled substances for therapeutic purposes to the public in accordance with provisions of the Pharmacy Law,

Business and Professions Code section 4000 et seq., discussed in Legal Conclusion 9. Inspector Huhn underscored honesty, trustworthiness, and good judgment as “key” qualifications for properly discharging a pharmacist technician’s duties.

18. Inspector Huhn opined respondent’s record of three DUI convictions “raise[s] questions for the Board whether he is emotionally stable for the job.” Inspector Huhn opined respondent did not show good judgment. Inspector Huhn testified that “good judgment is needed integrating new information with existing knowledge about patients” and without good judgment “HR issues arise” and it “could lead to medication errors and patient harm.” Inspector Huhn further testified, “A tech receives a lot of confidential information that has to remain secret. . . . Good judgment is needed because the tech is handling protected health information and having conversations with nursing.” Focusing on respondent’s December 4, 2022 DUI, Inspector Huhn noted respondent “said one beer, then three beers” when responding to a PVEPD officer’s inquiry about how much alcohol was consumed that day and opined respondent’s response “raises concern for the Board because some deception was going on there.” Inspector Huhn additionally opined respondent’s “refusal to do the field sobriety test showed no respect for authority.”

### **Costs of Enforcement**

19. The Board incurred costs of enforcement totaling \$6,556.26. These costs are reasonable pursuant to Business and Professions Code (Code) section 125.3.

20. Respondent testified, “I do not have that money but I can make payments.”

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## LEGAL CONCLUSIONS

### Applicable Law

1. The purpose of this administrative proceeding is not to impose additional punishment on respondent. (See *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Appropriate and significant criminal consequences have been imposed on respondent. (See Factual Finding 9.) The purpose of this administrative proceeding is to determine respondent's fitness or qualification to perform the functions and duties of a pharmacy technician consistent with the public health, safety, or welfare. (Accord, *Ettlinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856 [favorably citing certain State Bar Court precedent for the proposition that the public, among other interests, must be protected from those who do not measure up to their responsibilities].)

2. Thus, the Pharmacy Law authorizes discipline of any holder of a pharmacy technician registration who is guilty of unprofessional conduct. (Bus. & Prof. Code, §§ 490, 4300, and 4301.)

3. It is unprofessional conduct for the holder of a pharmacy technician registration to administer to himself or herself alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself or herself or to the extent that the use impairs the ability to conduct with safety to the public the practice authorized by the registration. (Bus. & Prof. Code, § 4301, subd. (h).)

4. It is unprofessional conduct for the holder of a pharmacy technician registration to be convicted of more than one misdemeanor following the use,

consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances. (Bus. & Prof. Code, § 4301, subd. (k).)

5. 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. (Bus. & Prof. Code, § 4301, subd. (l).)

6. A crime, unprofessional misconduct, or act is substantially related to the qualifications, functions or duties of a registered pharmacy technician if to a substantial degree it evidences a present or potential unfitness to perform the functions authorized by licensure in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770, subd. (a).) Substantially related crimes, professional misconduct, or acts include, but are not limited to, those which involve a conviction for driving under the influence of alcohol. (Cal. Code Regs., tit. 16, § 1770, subd. (c)(5).)

7. 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. (Bus. & Prof. Code, §§ 493 and 4301, subd. (l).)

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

8. A pharmacy technician registration is an occupational license. To obtain a registration, an applicant must complete 240 hours of instruction covering, among other things, "the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy." (Cal. Code Regs., tit. 16, § 1793.6.)

This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance*, *supra*, 135 Cal.App.3d at p. 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

9. The Pharmacy Law makes plain that a pharmacy technician performs nondiscretionary tasks not requiring the type of professional judgment exercised by a pharmacist. "A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." (Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician's nondiscretionary tasks may include "(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging." (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized "to perform any act requiring the exercise of professional judgment by a pharmacist." (Bus. & Prof. Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, §1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient's medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

10. 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 and 500.)

11. "'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.)

### **Cause Exists to Discipline**

12. On December 4, 2022, for a third time, respondent consumed alcoholic beverages to an extent that was dangerous to himself and the public. He drove a motor vehicle on the public roadways with a blood alcohol concentration level in excess of the baseline measurement of intoxication. As a result, on November 27, 2023, respondent was convicted of a misdemeanor crime involving his dangerous consumption of alcohol.

13. Respondent's December 4, 2022 misconduct and resulting November 27, 2023 misdemeanor criminal conviction are substantially related to the qualifications, functions, or duties of a pharmacist technician. Respondent demonstrated poor judgment, a reckless disregard for the health, safety, or welfare of himself and members of the public, and indifference for legal prohibitions against drunk driving when he operated a vehicle while intoxicated. As acknowledged in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770:

Alcohol consumption quickly affects normal driving ability and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge

concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance[.] Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

14. Respondent misconduct and conviction potentially undermine patients and prescribers' confidence in his integrity performing technician tasks and, derivatively, confidence in the ability of pharmacists and intern pharmacists, whom respondent may assist, to ensure the safe, effective delivery of pharmaceutical care and services. This is so because, as explained in the Board's *A Manual of Disciplinary Guidelines and Model of Disciplinary Orders* (Rev. 4/2024) (*Disciplinary Guidelines*), pharmacy technicians provide crucial assistance in the delivery of pharmaceutical care:

Pharmacists and intern pharmacists are patient advocates and vital members of the clinical care team who provide pharmaceutical care and exercise clinical judgment for their patients. They also exercise critical vigilance and control over medication stocks, drug inventories, and quality assurance protocols. Pharmacy technicians provide crucial assistance to pharmacists and intern pharmacists in all of their pharmacy tasks. . . . The board recognizes the importance of ensuring the safe and effective delivery of dangerous drugs and controlled substances for therapeutic purposes. At the same time and given the historical and

current abuse and diversion of drugs, particularly controlled substances, the board believes there should be no tolerance for licensees who traffic in drugs or who, in the absence of appropriate evidence of rehabilitation, personally abuse drugs or alcohol.

(Disciplinary Guidelines at p. 1.)

15. In sum, respondent violated the law when comporting himself in a law abiding manner is important for engendering public trust as he executes the functions and duties of a pharmacy technician. His December 4, 2022 misconduct and November 27, 2023 criminal conviction evince a present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Respondent's unprofessionalism merits discipline of his registration. (See e.g., *Sula v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, indicating a showing that a licensee engaged in statutorily enumerated conduct provides a basis for discipline.)

16. Complainant proved by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300, and 4301, subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770. As discussed in Factual Finding 9, Respondent engaged in unprofessional conduct by incurring a conviction for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

17. Complainant proved by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration pursuant to Business and

Professions Code sections 490, 4300, and 4301, subdivision (k). As discussed in Factual Finding 9, respondent engaged in unprofessional conduct by sustaining a third criminal conviction involving the consumption of alcohol.

18. Complainant proved by a preponderance of the evidence cause exists to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300, and 4301, subdivision (h). As discussed in Factual Finding 10, respondent engaged in unprofessional conduct by consuming alcoholic beverages to an extent that was dangerous to himself and others.

### **Imposition of Discipline**

19. A determination cause exists to discipline respondent's pharmacy technician registration does not end the analysis. Conduct underlying cause for discipline must affect respondent's present or potential unfitness to provide assistance to pharmacists and intern pharmacists in a manner consistent with the public health, safety, or welfare. (See *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1139.) "[A] statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice that profession." (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 788.)

20. Cause to discipline respondent's pharmacy technician registration may be overcome with a demonstration of rehabilitation. Respondent bears the burden of presenting substantial persuasive evidence of his rehabilitation. (Evid. Code, §§ 115 and 500.)

21. The *Disciplinary Guidelines* lists the following as examples of appropriate evidence demonstrating rehabilitative efforts and competency:

- a. Recent, dated, written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice relevant to the disciplinary proceeding, including the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by board staff.
- b. Recent, dated, letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation. Such letters and report will be subject to verification by board staff.
- c. Recent, dated, letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.) Such analyses and reports will be subject to verification by board staff.
- d. Recent, dated, laboratory analyses or drug screen reports confirming abstention from drugs and

alcohol. Such analyses and reports will be subject to verification by board staff.

- e. 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. Such reports will be subject to verification by board staff.
- f. Recent, dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by board staff.
- g. Recent, dated, letters from persons familiar with respondent in either a personal or professional capacity regarding their knowledge of: the respondent's character; the respondent's rehabilitation, if any; the conduct of which the respondent is accused; or any other pertinent facts that would enable the board to better decide the case. Such letters must be signed under penalty of perjury and will be subject to verification by board staff.

(Disciplinary Guidelines at pp. 4-5.)

22. The *Disciplinary Guidelines* additionally lists factors for consideration when determining penalties. Those factors include actual or potential harm to the public or any consumer; prior disciplinary record; the number and variety of current violations; nature and severity of the act (s), offense(s), or crime(s) under consideration; mitigating evidence; rehabilitation evidence; compliance with sentence and probationary terms; over all criminal record; time passed since the act(s) or offense(s); and Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards) implemented by the Department pursuant to Business and Professions Code section 315. (See Disciplinary Guidelines at p. 3.)

23. Respondent offered an appraisal of his work at his previous place of employment, Rite Aid, from a pharmacist knowledgeable about his competence as a pharmacy technician. The pharmacist, however, does not disclose any knowledge about respondent's DUI misconduct. The pharmacist's appraisal is not sworn under penalty of perjury. Respondent submitted evidence of his successful completion of a court-ordered three-month, first offender program; however, he offered no letters from counselors describing or evaluating his participation in that program. There is no diagnosis by a counselor, therapist, or psychologist to establish whether respondent is a substance abuser requiring him to undergo regular and routine physical examination or assessment or laboratory analysis or drug screening to confirm abstention from drugs or alcohol. Respondent's three-year, court-imposed summary probation concludes in 2026. There are no letters from probation officials affirming his compliance with the terms and conditions the court imposed in connection with his November 27, 2023 criminal conviction.

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24. Respondent has no prior history of administrative discipline. Respondent's November 27, 2023 alcohol-related misdemeanor criminal conviction is the sole conviction alleged as grounds for disciplining respondent's pharmacy technician registration. Respondent's overall criminal record, however, includes two additional DUI convictions that he incurred on July 23, 2004 and on November 12, 2008. The 2004 DUI conviction is more than two decades old and the 2008 DUI conviction is more than one and one-half decades old. Ordinarily, with the passage of those extended periods of time, the significance of the 2004 and 2008 DUI convictions would be diminished. (See *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061.) But given respondent's more recent November 27, 2023 DUI conviction, their saliency is refreshed, especially in light of the court's prior advisement to respondent regarding the extreme danger his conduct poses to human life when he drives under the influence of alcohol. (See Factual Finding 13.) In the aggregate, these three instances of inebriated driving create a presumption of alcohol abuse, which the evidence in the record fails to rebut.

25. Respondent's DUI misconduct resulting in criminal conviction is a serious matter. As the Board's expert opined, respondent demonstrated poor personal and professional judgment when he disregarded the law prohibiting alcohol-impaired driving and drove under the influence of alcohol. Such unprofessionalism is an anathema to the responsible behavior required of Board licensees, including pharmacy technicians such as respondent. Even if respondent were not working in his licensed capacity as a pharmacy technician at the time of his dangerous use of alcohol, and therefore presented no actual or potential risk of harm to a consumer of pharmaceutical services, the Board need not wait until harm occurs in order to discipline respondent's pharmacy technician registration. (See e.g. *Griffiths v. Superior*

*Court* (2002) 96 Cal.App.4th 757, 772-773 discussing *In re Kelley* (1990) 52 Cal.3d 487, 495-496.)

26. The totality of the evidence in the record suggests a nascent, ongoing rehabilitation. The law favors rehabilitation. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.) Imposition of a level of discipline appropriate to ensure public protection as respondent proceeds with his rehabilitation efforts is warranted. (See *Griffiths, supra*, 96 Cal.App.4th at pp. 772-773 [noting the preventative functions of license discipline, main purpose of which is protection of the public, include the improvement and rehabilitation of licensees].)

27. In the *Disciplinary Guidelines*, the Board identifies four categories of violations and associated recommended minimum and maximum penalties. The categories of violations are arranged in ascending order from the least serious (Category I) to the most serious (Category IV). The *Disciplinary Guidelines* instructs, "For pharmacy technicians and designated representatives, the board believes an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and if revocation is not imposed that a minimum Category III level of discipline should be imposed." (*Disciplinary Guidelines* at p. 6.) Category III level of discipline is recommended for, among other things, "most criminal convictions involving alcohol." (*Id.* at p. 9.) The *Disciplinary Guidelines* states, "Violations in this category may include: [¶] . . . [¶] violation(s) of laws governing . . . alcohol, including repeat or serious . . . abuse[.]" (*Ibid.*)

28. The totality of the evidence in the record further dictates imposition of the minimum Category III level of discipline, which according to the *Disciplinary Guidelines* is a stayed revocation, 90 days actual suspension, and probation for a term

of five years with standard terms and conditions and optional terms and conditions as appropriate. (See Disciplinary Guidelines at p. 8.)

### **Cost Recovery Award**

29. A registrant found to have violated the Pharmacy Law may be directed to pay a sum not exceeding the reasonable costs of investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

30. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, 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." (*Id.*) The Board, in imposing costs in such situations, must consider the registrant's subjective good faith belief in the merits of his position and whether the registrant has raised a colorable defense. The Board must also consider the registrant's ability to make payment.

31. Having considered the *Zuckerman* factors, including respondent's testimony affirming his ability to pay a cost recovery award pursuant to a payment plan as discussed in Factual Finding 20, the Board shall recover its costs of enforcement totaling \$6,556.26.

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## ORDER

Pharmacy Technician Registration number TCH 40416, issued to Jose Roberto Barrientos (respondent), is revoked; however, revocation of the registration is stayed. The registration is suspended for a period of 90 days from the effective date of this Proposed Decision and respondent is subject to five (5) years' probation on the following terms and conditions:

### 1. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

- 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 license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

## **2. Report to the Board**

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

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

## **3. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

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

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the

terms and conditions of his probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

## **5. 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 7832 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s) and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a)

her direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7832, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that they have read the decision in case number 7832 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 7832 and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that they have read the decision in case number 7832, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

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

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

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

## **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 enforcement in the amount of \$6,556.26. Respondent shall be permitted to pay these costs pursuant to a payment plan approved by the Board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

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## **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 license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

## **11. Certification Prior to Resuming Work**

Respondent shall be suspended, and shall not work as a pharmacy technician, until he has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that he may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board 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 do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer,

or assist any licensee of the board. Respondent shall not have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension 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 ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the

next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

### **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.

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## **14. Completion of Probation**

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

## **15. Suspension**

As part of the probation, respondent is suspended from practice as a pharmacy technician for 90 days beginning the effective date of this decision.

During the suspension, respondent shall not enter any pharmacy area or any portion the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs that is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician.

Failure to comply with this suspension shall be considered a violation of probation.

## **16. Clinical Diagnostic Evaluation**

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter if required by the board or its designee, respondent shall undergo, at his own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the board or its designee. The approved evaluator shall be provided with a copy of the board's accusation and decision. Respondent shall

sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a [insert license type] with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board or its designee that practice may resume.

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

## **17. 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/she] 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.

## **18. 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 thirty (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, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by respondent. During the period of absence of 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 ten (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 pharmacist 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.

DATE: 01/17/2025

*Jennifer Russell*

JENNIFER M. RUSSELL

Senior Administrative Law Judge

Office of Administrative Hearings

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7

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

12 In the Matter of the Accusation Against:

Case No. 7832

13 **JOSE ROBERTO BARRIENTOS**

**ACCUSATION**

14 1907 Burnside Ave  
Los Angeles, CA 90016

15 Pharmacy Technician License No. TCH 40416

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 (Board), Department of Consumer Affairs.

21 2. On or about December 12, 2001, the Board issued Pharmacy Technician License  
22 Number TCH 40416 to Jose Roberto Barrientos (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 August 31, 2025, unless renewed.

25 **JURISDICTION**

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

28 ///

1           4.     Section 4300 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                   (c) The board may refuse a license to any applicant guilty of unprofessional  
12                   conduct. The board may, in its sole discretion, issue a probationary license to any  
13                   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:

14                           (1) Medical or psychiatric evaluation.

15                           (2) Continuing medical or psychiatric treatment.

16                           (3) Restriction of type or circumstances of practice.

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

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

19                           (6) Random fluid testing for alcohol or drugs.

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

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

24                   (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  
25                   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  
26                   superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

27           5.     Section 4300.1 states:

28                   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

1 placement of a license on a retired status, or the voluntary surrender of a license by a  
2 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.

3 **STATUTORY PROVISIONS**

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

7 7. Section 4301 states, in pertinent part:

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

10 . . .

11 (h) The administering to oneself, of any controlled substance, or the use of any  
12 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
13 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.

14 . . .

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

17 (l) The conviction of a crime substantially related to the qualifications,  
18 functions, and duties of a licensee under this chapter. The record of conviction of a  
19 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  
20 state regulating controlled substances or dangerous drugs shall be conclusive  
evidence of unprofessional conduct. In all other cases, the record of conviction shall  
21 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  
22 fix the degree of discipline or, in the case of a conviction not involving controlled  
substances or dangerous drugs, to determine if the conviction is of an offense  
23 substantially related to the qualifications, functions, and duties of a licensee under this  
chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
24 contendere is deemed to be a conviction within the meaning of this provision. The  
board may take action when the time for appeal has elapsed, or the judgment of  
25 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  
26 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.

27 8. Section 4307 states:

28 (a) Any person who has been denied a license or whose license has been

1 revoked or is under suspension, or who has failed to renew his or her license while it  
2 was under suspension, or who has been a manager, administrator, owner, member,  
3 officer, director, associate, partner, or any other person with management or control  
4 of any partnership, corporation, trust, firm, or association whose application for a  
5 license has been denied or revoked, is under suspension or has been placed on  
6 probation, and while acting as the manager, administrator, owner, member, officer,  
7 director, associate, partner, or any other person with management or control had  
8 knowledge of or knowingly participated in any conduct for which the license was  
9 denied, revoked, suspended, or placed on probation, shall be prohibited from serving  
10 as a manager, administrator, owner, member, officer, director, associate, partner, or in  
11 any other position with management or control of a licensee as follows:

12 (1) Where a probationary license is issued or where an existing license is placed  
13 on probation, this prohibition shall remain in effect for a period not to exceed five  
14 years.

15 (2) Where the license is denied or revoked, the prohibition shall continue until  
16 the license is issued or reinstated.

17 (b) "Manager, administrator, owner, member, officer, director, associate,  
18 partner, or any other person with management or control of a license" as used in this  
19 section and Section 4308, may refer to a pharmacist or to any other person who serves  
20 in such capacity in or for a licensee.

21 (c) The provisions of subdivision (a) may be alleged in any pleading filed  
22 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
23 the Government Code. However, no order may be issued in that case except as to a  
24 person who is named in the caption, as to whom the pleading alleges the applicability  
25 of this section, and where the person has been given notice of the proceeding as  
26 required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
27 the Government Code. The authority to proceed as provided by this subdivision shall  
28 be in addition to the board's authority to proceed under Section 4339 or any other  
provision of law.

## REGULATORY PROVISIONS

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

(a) For the purpose of denial, suspension, or revocation of a personal or facility  
license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the  
Business and Professions Code, a crime, professional misconduct, or act shall be  
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.

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

(1) The nature and gravity of the offense;

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

(3) The nature and duties of the practice, profession, or occupation that may be

performed under the license type sought or held.

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

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

(2) Violate or attempt to violate, directly or indirectly, or to aid, abet or 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.

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

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

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

#### **COST RECOVERY**

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

#### **FIRST CAUSE FOR DISCIPLINE**

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

11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. Specifically, on or about November 27, 2023, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol] in the criminal proceeding entitled *The People of State of California v. Jose Barrientos* (Super. Ct. L.A. County, 2023, No. 3TR02385.) The court ordered Respondent to enroll and complete a 6-month first offender alcohol program and placed him on 3 years' probation, with terms and conditions. The circumstances surrounding the conviction are that on or about December 4, 2022, at

1 approximately 5:30 p.m., police officers conducted an enforcement stop after Respondent failed  
2 to stop at a stop sign. Upon contact, officers observed a beer can in a cup holder behind the  
3 driver. While speaking to Respondent, a police officer could smell the odor of alcohol emitting  
4 from his person and he was observed to have red watery eyes and slurred speech. When asked,  
5 Respondent initially stated he had consumed one beer and later stated he had consumed three.  
6 Respondent refused to perform any of the field sobriety tests and was placed under arrest. During  
7 the booking procedure, Respondent provided a blood sample at approximately 7:40 p.m. that  
8 revealed a blood alcohol content level of 0.18%.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Alcohol Related Convictions)**

11 12. Respondent is subject to disciplinary action under section 4301, subdivision (k), on  
12 the grounds of unprofessional conduct, in that on or about November 27, 2023, Respondent  
13 sustained a third criminal conviction involving the consumption of alcohol. Complainant refers  
14 to, and by this reference incorporates, the allegations set forth above in paragraph 11 and below in  
15 paragraph 14, as though fully set forth herein.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of Alcohol)**

18 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on  
19 the grounds of unprofessional conduct, in that on or about December 4, 2022, Respondent used  
20 alcoholic beverages to an extent or in a manner dangerous or injurious to himself, any person, or  
21 the public. Complainant refers to, and by this reference incorporates, the allegations set forth  
22 above in paragraph 11, as though fully set forth herein.

23 **DISCIPLINE CONSIDERATIONS**

24 14. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges, as follows:

26 a. On or about November 12, 2008, after pleading nolo contendere, Respondent was  
27 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
28 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal

1 proceeding entitled *The People of State of California v. Jose Barrientos* (Super. Ct. L.A. County,  
2 2008, No. 8MP12785.)

3 b. On or about July 23, 2004, after pleading nolo contendere, Respondent was convicted  
4 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving  
5 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding  
6 entitled *The People of State of California v. Jose Barrientos* (Super. Ct. L.A. County, 2004, No.  
7 4MT06649.)

8 **OTHER MATTERS**

9 15. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician  
10 License Number TCH 40416 issued to Jose Roberto Barrientos, Jose Roberto Barrientos shall  
11 be prohibited from serving as a manager, administrator, owner, member, officer, director,  
12 associate, or partner of a licensee for five years if Pharmacy Technician License Number TCH  
13 40416 is placed on probation or until Pharmacy Technician License Number TCH 40416 is  
14 reinstated if it is revoked.

15 **PRAYER**

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

18 1. Revoking or suspending Pharmacy Technician License Number TCH 40416, issued  
19 to Jose Roberto Barrientos;

20 2. Prohibiting Jose Roberto Barrientos from serving as a manager, administrator, owner,  
21 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician  
22 License Number TCH 40416 is placed on probation or until Pharmacy Technician License  
23 Number TCH 40416 is reinstated if Pharmacy Technician License Number TCH 40416 issued to  
24 Jose Roberto Barrientos is revoked;

25 3. Ordering Jose Roberto Barrientos to pay the Board of Pharmacy the reasonable costs  
26 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
27 section 125.3; and, if placed on probation, the costs of probation monitoring; and,

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

DATED: 7/28/2024

Sodergren,  
Anne@DCA

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Sodergren, Anne@DCA  
Date: 2024.07.28  
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ANNE SODERGREN  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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