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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 7921

13 **LAURA AYLIN MELENDEZ**

STATEMENT OF ISSUES

14 **Pharmacy Technician Applicant**

15 Respondent.

16
17 **PARTIES**

18 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about January 22, 2024, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for a Pharmacy Technician Registration from Laura Aylin
22 Melendez (Respondent). On or about January 10, 2024, Respondent certified under penalty of
23 perjury to the truthfulness of all statements, answers, and representations in the application. The
24 Board denied the application on August 15, 2024.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board) for the
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 118 of the Code states, in relevant part:

6 “(a) The withdrawal of an application for a license after it has been filed with a board in
7 the department shall not, unless the board has consented in writing to such withdrawal, deprive
8 the board of its authority to institute or continue a proceeding against the applicant for the denial
9 of the license upon any ground provided by law or to enter an order denying the license upon any
10 such ground.”

11 5. Section 4300.1 of the Code states:

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

16 **STATUTORY PROVISIONS**

17 6. Code section 480, subdivision (a)(1), states:

18 (a) Notwithstanding any other provision of this code, a board may deny a
19 license regulated by this code on the grounds that the applicant has been convicted of
20 a crime or has been subject to formal discipline only if either of the following
21 conditions are met:

22 (1) The applicant has been convicted of a crime within the preceding seven
23 years from the date of application that is substantially related to the qualifications,
24 functions, or duties of the business or profession for which the application is made,
25 regardless of whether the applicant was incarcerated for that crime, or the applicant
26 has been convicted of a crime that is substantially related to the qualifications,
27 functions, or duties of the business or profession for which the application is made
28 and for which the applicant is presently incarcerated or for which the applicant was
released from incarceration within the preceding seven years from the date of
application. . .

26 7. Section 4300 of the Code states:

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

28 (b) The board shall discipline the holder of any license issued by the board,

1 whose default has been entered or whose case has been heard by the board and found
2 guilty, by any of the following methods:

3 (1) Suspending judgment.

4 (2) Placing him or her upon probation.

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

6 (4) Revoking his or her license.

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

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

15 (1) Medical or psychiatric evaluation.

16 (2) Continuing medical or psychiatric treatment.

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

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

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

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

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

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

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

8. Section 4301 of the Code states, in relevant part:

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

...

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

1 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
2 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.

3 . . .

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

23 . . .

24 **REGULATORY PROVISIONS**

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

26 (a) For the purpose of denial, suspension, or revocation of a personal or facility
27 license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the
28 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

1 § 23578). The court sentenced Respondent to serve twelve days in county jail and placed her on
2 probation for 3 years with various terms and conditions. These terms included successfully
3 completing a three-month Driving Under the Influence p\Program and paying various fines and
4 fees.

5 **FIRST CAUSE FOR DENIAL OF APPLICATION**
6 (Unprofessional Conduct – Dangerous Use of Alcohol)

7 12. Respondent’s application for a Pharmacy Technician Registration is subject to denial
8 under Code section 4300, subdivision (c), by reference to Code section 4301, subdivision (h), in
9 that, on or about October 28, 2023, Respondent engaged in unprofessional conduct by using
10 alcohol in a dangerous and injurious manner when she was arrested for driving under the
11 influence of alcohol near San Jose, California. The circumstances are more fully explained in
12 paragraphs 10 and 11, above.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 (Conviction of a Substantially Related Crime)

15 13. Respondent’s application for a Pharmacy Technician Registration is subject to denial
16 under Code section 480, subdivision (a)(1), and Code section 4301, subdivision (l), in that, on or
17 about June 3, 2024, Respondent was convicted of driving with a .08% or higher blood alcohol
18 concentration (Veh. Code § 23152, subd. (b)) in Santa Clara County Superior Court. The
19 circumstances are more fully explained in paragraphs 10 and 11, above.

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PRAYER

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

1. Denying the application of Laura Aylin Melendez for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 1/13/2025

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

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