

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

In the Matter of the Accusation  
Against:

SAMANTHA NICOLE SCHMIDT,

Pharmacy Technician Registration  
No. TCH 114184

Respondent.

Case No. 5777

OAH No. 2016090864

**DECISION AND ORDER**

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

This decision shall become effective at 5:00 p.m. on April 19, 2017.

It is so ORDERED on March 20, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

A hearing convened before Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, on January 5, 2017, in Sacramento, California.

Joshua B. Eisenberg, Deputy Attorney General, Department of Justice, appeared on behalf of complainant Virginia Herold, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Jonathan Turner, Attorney at Law, appeared on behalf of respondent Samantha Nicole Schmidt, who was present.

Oral and documentary evidence was received. At the conclusion of the evidentiary hearing, the parties offered oral closing arguments. The record was then closed and the matter was submitted for decision on January 5, 2017.

**FACTUAL FINDINGS**

1. On October 20, 2011, the Board issued Pharmacy Technician Registration Number TCH 114184 to respondent. This license is current through May 31, 2017.
2. On August 11, 2016, complainant signed an Accusation seeking to discipline respondent's license for unprofessional conduct under Business and Professions Code section 4301, based upon her: (1) conviction described in Factual Finding 5; (2) use of alcohol to an extent or in a manner dangerous to herself or to the public; and (3) conviction of more than one misdemeanor involving consumption of alcohol. As a matter in aggravation,

complainant alleged respondent's previous alcohol-related conviction, described in Factual Finding 6, which she disclosed to the Board at the time of her application for licensure. Complainant also requested that respondent be ordered to pay the Board's reasonable costs for the investigation and enforcement of this matter.

3. On September 2, 2016, respondent filed a Notice of Defense and requested a hearing. The matter was then set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

4. At the hearing, complainant called Chi Keung Joseph Wong as a witness. Respondent testified on her own behalf and called Amy Serna, Andrea Ann Green, Sidrah Anwar and Jennifer Brune as witnesses. The testimony of these witnesses is a paraphrased as relevant below.

#### *Respondent's Convictions*

5. On December 21, 2015, in Sacramento County Superior Court Case Number 15M14441, respondent was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving a vehicle while having a blood alcohol content of 0.08 percent or more), based upon her plea of no contest. Respondent admitted that this driving under the influence (DUI) offense occurred within ten years of a separate violation of Vehicle Code section 23152, subdivision (b), with an enhancement pursuant to Vehicle Code section 23578.<sup>1</sup>

Respondent was placed on four years of informal probation and ordered to serve 30 days in county jail. Work release program was permitted, but respondent was required to complete 96 continuous hours in jail. Respondent was ordered to enroll in and complete an SB38/18-month DUI Multiple Offender Program, to pay fines, fees and restitution as ordered, to not operate a vehicle with any measurable alcohol in her system and to obey all laws. Respondent's informal probation for this offense extends through December 21, 2019.

The facts underlying this conviction occurred at 11:30 p.m. on August 28, 2015, when Sacramento Police Officer Gates observed respondent's car partially in the southbound lane of traffic, with its front passenger side bumper resting against the rear bumper of a parked pickup truck. Respondent's car was running, the headlights were on, and it appeared to have collided with the truck. Officer Gates observed respondent unconscious in the driver's seat, with her chin against her chest, saliva hanging from her mouth, flushed skin and a strong odor of alcohol emanating from her body. Respondent did not respond to verbal or tactile

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<sup>1</sup> In relevant part, Vehicle Code section 23578 provides that, if a person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

stimulus. The officer put the car in park and turned the ignition off. Based on respondent's condition, he requested a response from the Sacramento Fire Department (SFD). When SFD personnel arrived, respondent was able to respond with a non-verbal "thumbs up" signal, but was unable to walk or stand on her own and had to be carried to the ambulance gurney. Officer Gates spoke to respondent once she was at the University of California, Davis Medical Center. By this time, respondent had vomited and was coherent, but she had no recollection of what had transpired or where she was. Officer Gates advised respondent she was under arrest for DUI. Respondent consented to blood alcohol testing, which was confirmed as .24 percent. Respondent was arrested and released with a court date.

6. On October 20, 2009, in Sacramento County Superior Court Case Number 09T05579, respondent was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), based upon her plea of no contest, with an enhancement pursuant to Vehicle Code section 23578. The incident which resulted in this conviction occurred at 8:25 a.m. on September 6, 2009. Respondent's blood alcohol content was .19 percent at the time of the incident.

Respondent was placed on informal probation for three years, and her driver's license was suspended for one year. She was ordered to serve 48 hours jail time, to pay fines and fees, to enroll in and complete a six-month high blood alcohol program, to obey all laws and to not drive with any measurable alcohol in her system. Her probation for this offense extended through October 20, 2012.

#### *Respondent's Evidence*

7. *Respondent's Testimony:* Respondent is 27 years old. She and her mother moved to California in 2007 from their home in Nebraska. In September 2007, respondent began attending California State University, Sacramento (CSU), with a major in psychology. She later switched her major to bio-chemistry, with a goal of becoming a pharmacist. In 2010, respondent transferred to Carrington College in Sacramento, in order to obtain a credential in pharmacy technology. Respondent maintained a 4.0 Grade Point Average (GPA) at Carrington, from which she received her Associate of Science degree and pharmacy technology credential on April 9, 2011. Although not required for licensure in California, respondent next took the National Certification Examination for Pharmacy Technicians from the Pharmacy Technician Certification Board. She passed this examination with a score of 95 percent. Respondent sought national certification to give her more flexibility in case she was accepted into a pharmacy program in another state. To maintain her national certification, respondent is required to complete 20 continuing education units in pharmacy topics every two years.

In October 2011, respondent became a licensed pharmacy technician. In May of 2012, respondent was hired by CVS as a pharmacy technician and she has worked with CVS since that time. Respondent was initially hired on a part-time basis, while she continued in school. She worked full-time during her school breaks and was a "floater" who worked at 10

different CVS sites. She eventually spent more time at the CVS store on K Street in downtown Sacramento.

During her part-time work at CVS, respondent pursued her Bachelor's degree. On January 4, 2016, respondent graduated *magna cum laude* from CSU, with a degree in Chemistry/Biochemistry. Her GPA was approximately 3.7. Following graduation, respondent was promoted to a full-time position as Inventory Specialist at CVS – K Street. In addition to pharmacy technician duties, respondent is responsible for all inventory-related daily orders from outside vendors, out of stock orders, special ordering of medications and pulling all expired drugs. Due to the small size of CVS-K, there was not enough volume to hire a lead pharmacy technician. Respondent's Inventory Specialist duties include training, overseeing and scheduling all new pharmacy technician employees.

As an Inventory Specialist, respondent is always supervised by either CVS pharmacist Ms. Anwar or Pharmacy Manager Mr. Kui. Respondent's professional goal is to attend pharmacy school and become a pharmacist herself. She lost interest in psychology but, once exposed to pharmacy, found the field to be fascinating. Respondent explained that her pharmacy technician license is very important to her, because she is so passionate about the field of pharmacy and wants to help patients the best way she can. In her experience, pharmacy interns often do not understand basic things known to pharmacy technicians. Respondent enjoys learning about medicines and their effects on the body, as well as the social issues related to the use and abuse of controlled substance. She is particularly interested in assisting patients on a path to better health. Respondent has worked hard to obtain competitive grades for admission to pharmacy school and is always asking her supervisors questions to learn as much as she can.

8. Respondent testified candidly about her alcohol consumption. She has always been a social binge drinker, but her drinking has never affected her work or her school. In August 2015, respondent had just broken up with her first lover, so her drinking was exacerbated at that time. She acknowledged that the police officer found her passed out in her car after she hit the bumper of a parked car, and that she was taken to the hospital to assess her injuries. Respondent was charged and released. In December 2015, respondent was convicted of a misdemeanor DUI with a prior. She was fined \$2,500 (paid); ordered into an 18-month DUI classes at a cost of \$1,700 (paid); served four days actual jail time between March 9 and 13, 2016 (served); and completed 11 days of work project with the Sheriff's Department, at a cost of \$500 (paid). Respondent lost her driver's license for 90 days, and had to rely on friends, family and mass transportation to get to work. Respondent was required to have a breathalyzer installed in her car, which costs \$69 each month. The breathalyzer will remain in respondent's car until she completes the 18-month program in July of 2017. Respondent also attended a two and a half hour MADD California VIP Victim Panel, for which she provided proof of completion.

Respondent described the MADD Panel as a very emotional presentation on the deadly effects of drunken driving. Respondent's 18-month DUI program consists of twice weekly, two-hour group classes, with a 15 minute individual check-in to ensure she is on

track. She is now in the last "re-entry" phase of the program, in which she is only required to attend a single one-hour class each month until July. Respondent believes she has abided by all conditions of her court ordered probation. The only outstanding items are to finish the DUI program, set to end July 2017, and to continue using the breathalyzer until that time.

9. Since her arrest in August 2015, respondent has changed her way of thinking about drinking alcohol. Initially, she continued going out and drinking socially, but she switched to using Uber and Lyft so she would not endanger others by driving. In December 2015, respondent received her college degree at about the same time that she was convicted and sentenced to spend four days in county jail. Respondent was scared; she had never spent time in jail before. She saw where her life was headed with this conviction and thought about how hard she had worked to accomplish her goals. Respondent realized she could only succeed if she quit drinking alcohol all together. This is what she did and she began a complete change of lifestyle. Respondent lost "lots of party friends," but her new friends are as focused on health and exercise as she is and they support her choice not to drink.

10. Respondent's sobriety date is January 6, 2016. Respondent believes she has adopted much better coping mechanisms. If feeling stressed, respondent will exercise or communicate with a close loved one. Respondent agrees that she has a drinking problem, because this is her second DUI and because she has used drinking as a way to cope, but did it to excess. Respondent has only recently begun to attend Alcoholics Anonymous (AA) meetings. She did not attend AA with any frequency in 2016 because she was focusing on completing the requirements for her court-ordered probation and balancing new full-time employment with her DUI program. She is now attending different AA meetings to find one that is a good "fit" for her; once she does, respondent intends to find a sponsor and commit herself to the program. Because the demands of her DUI program are now reduced in frequency from two classes a week to once a month, respondent has time to dedicate herself to AA. She intends to attend one to two meetings a week.

11. Respondent takes full responsibility for the conduct leading to both of her DUI convictions. She is grateful that she did not hurt anyone. The experience has opened her eyes and given her the push she needed to cease alcohol consumption. In respondent's view the only way to assure the Board that alcohol will not affect her in the future is to quit drinking. She has learned new coping mechanisms, made important lifestyle changes and now wishes to focus on her dream of becoming a pharmacist. Respondent has reviewed the Board's probationary terms and is willing to abide by them if she is granted probation.

12. *Testimony of Pharmacist Sidrah Anwar:* Ms. Anwar has been licensed as a pharmacist in California since August of 2014. She is the pharmacist at the CVS Drug Store at 1701 K Street, in Sacramento. Over the past two and a half years, Ms. Anwar has worked with respondent. Respondent was initially a pharmacy technician, but was promoted to Inventory Specialist on January 16, 2016. Ms. Anwar is not respondent's direct supervisor but she has worked with her five days a week since this promotion. This particular CVS pharmacy is very small so Ms. Anwar is able to closely observe respondent's work and interactions with customers. In addition, since they first began working together, respondent

has asked Ms. Anwar many questions about how she became a pharmacist, and shared her dream of becoming a pharmacist as well.

Based on her experience, observation and frequent interaction with respondent, Ms. Anwar has a very positive opinion of respondent's job performance as a pharmacy technician. In addition to performing normal pharmacy technician duties, the Inventory Specialist acts as a *de facto* lead pharmacy technician, and performs additional duties that include being responsible for ordering and dealing with shortages and return of outdate products. Ms. Anwar described respondent as a "great, definitely hard-working" employee who does not like to leave work for the next pharmacy technician to complete. She pushes herself to complete all pending work before her shift ends. Ms. Anwar has never seen respondent make a bad judgment call.

In Ms. Anwar's opinion, there is no reason to question respondent's trustworthiness or judgment at work. Rather, Ms. Anwar has found respondent to be "very up-front" and honest. She often brings issues to Ms. Anwar to discuss and will ask questions if anything is unclear. Respondent will often tell Ms. Anwar what she is thinking about a particular work question and seek confirmation of her assessment. Ms. Anwar acknowledged that a pharmacy technician's job can be stressful at times.

Ms. Anwar does not socialize with respondent and has never seen her drink alcohol. Respondent has never exhibited any behavior at work that caused Ms. Anwar to think she might have a drinking problem or that she was "hung over." Rather, respondent has always been alert and high functioning at work. In early January 2016, respondent told Ms. Anwar about her 2015 and 2009 DUIs, and that the Board was coming after her license. Knowledge of respondent's conviction did not change Ms. Anwar's opinion of respondent's good judgment in the professional context, because she has never seen any evidence that respondent's drinking affected her job performance.

As reflected in Ms. Anwar's October 3, 2016 letter to the Board, after respondent's conviction last year, respondent complied with her court mandated conditions and "has managed to consistently uphold her work principles showing maturity and professionalism. Her attendance was not compromised, her customer service continued to be engaging, and her work standard remained unhindered." Ms. Anwar noted that this conviction and licensing action made respondent realize that drinking alcohol has negatively affected her. Over the past year, respondent has totally changed her life by giving up drinking altogether and has now had one year of sobriety.

13. *Testimony of Jennifer Brune:* Ms. Brune has been a CVS Store Manager for seven years and the store manager for its K Street location since June 2014. In this context, she has managed hundreds of employees and oversees all personnel duties (hiring/firing) where respondent works. In early 2016, respondent told Ms. Brune about her current and previous DUI convictions. She was ashamed and embarrassed. For the past two and a half years, Ms. Brune has worked with and observed respondent perform her job duties on a daily basis. In her opinion, respondent is a very good worker (a "go-getter"), who is very reliable,

dependable, trustworthy, alert and caring with patients. Respondent knows the job well and trains all new pharmacy employees. Ms. Brune has never seen any indication at work that respondent has been drinking alcohol. Her testimony was consistent with her September 10, 2016 letter to the Board. In that letter, Ms. Brune described respondent as an employee who “exemplifies compassion for our patients and is a role model for her fellow colleagues.” Ms. Brune expressed strong support for respondent’s continued work at CVS, as well as her long term goal of becoming a pharmacist.

14. The testimony of Ms. Anwar and Ms. Brune was corroborated by letters from CVS Pharmacy Managers/Pharmacists Hellen Owuor and Tak Ming Kui, who provided similar laudatory assessments of respondent’s leadership, competence and character at work. Their letters were admitted and considered to the extent allowed by Government Code section 11513, subdivision (d).<sup>2</sup> Ms. Owuor and Mr. Kui have known and worked with respondent for, respectively two and nearly five years. Mr. Kui, who has been the CVS K Street pharmacist manager, wrote:

... Throughout all these years, she develops a reputation for reliability and excellence in all that she does. I have received numerous letters of recommendation from satisfied customers for her high quality of work and integrity. As a pharmacy technician, Samantha adheres to all company safety and security policies and regulations. She never sacrifices safety for productivity. She always leaves her work area clean and functional at the end of her shift. All of these demonstrate that she truly understands the importance of her job and the consequence of not doing so will put her coworkers and customers safety in jeopardy.

15. *Testimony of Amy Serna and Andrea Ann Green:* Respondent’s friend Amy Serna and her romantic partner Andrea Ann Green also testified about respondent’s character, her decision to quit drinking and her changed lifestyle since that time. Ms. Serna is respondent’s college friend. Ms. Green and respondent met on-line in October 2015, and have seen each other on a daily basis since that time. Respondent told Ms. Serna about her 2015 arrest, as well as about her prior DUI, several weeks after her recent arrest. Respondent was not proud of her behavior and expressed worry about its consequences on her licensure and future. Respondent told Ms. Green about her DUIs after they had been dating for a month. In doing so, respondent was humble, remorseful, accepted responsibility for her conduct and gave Ms. Green an option to stop their relationship in light of this information.

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<sup>2</sup> Government Code section 11513, subdivision (d), provides in pertinent part that “hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions . . . .”



They continued as a couple. Both women characterized respondent as trustworthy, motivated to succeed, hardworking and with typically good judgment.

Over the past year, Ms. Serna has become respondent's jogging and yoga buddy, working out together three times each week. Ms. Serna's testimony was consistent with her September 26, 2016 letter to the Board. This letter also described the stress-reducing benefits of respondent's yoga practice, which focuses on breathing and developing inner peace; the significant hardships respondent has overcome in the past year; and her own observations of respondent's competent functioning as a pharmacy technician ("... juggling what it seems like a thousand tasks at once but she still manages to have a smile on her face. Sam is a hard worker, intelligent, motivated, and all round genuine person.").

As reflect in her September 29, 2016 letter to the Board, Ms. Green gave respondent an ultimatum to either stop drinking alcohol or risk their relationship. On December 26, 2015, Ms. Green decided to stop drinking alcohol, and this is her sobriety date. A week later, respondent also stopped drinking alcohol. They have been able to support each other in their sobriety, and have each passed their one-year sobriety date. Ms. Green wrote that, "[b]ecoming sober has allowed [respondent] to reflect on all her prior mistakes and solidified her desire to pursue her dream of becoming a pharmacist. She has learned from this mistake and has rectified her actions in the ultimate way by choosing every day to not engage in the behavior that landed her in this predicament." In Ms. Green's opinion, respondent is a very strong person who is hard working, motivated, honest and passionate about her chosen career path in pharmacy.

16. Respondent's mother Pam Lewis wrote the Board a letter, which is considered under Government Code section 11513, subdivision (d). Ms. Lewis is a Registered Nurse (RN) with Kaiser Permanente. She explained that respondent has paternal relatives who have a history of alcoholism. Ms. Lewis believes respondent is an alcoholic who has used drinking to de-stress from the intense pressure she has placed on herself to do well academically. Ms. Lewis indicated that respondent has acknowledged that her use of alcohol is a problem and has stopped drinking altogether. As an RN who has seen the destruction alcohol can cause, Ms. Lewis expressed her belief that the 2015 conviction has served as a wake-up call for respondent, who now "understands the risk and damage that can be done if she were to drink again . . ." Ms. Lewis asserted that respondent has understood and "will comply with any measures you set for her . . ."

### *Discussion*

17. Respondent's 2015 misdemeanor conviction is substantially related to the qualifications, functions or duties of a licensed pharmacy technician, individually and when considered in light of her 2009 conviction for a similar high-blood-alcohol driving offense. Although there is no evidence that respondent's use of alcohol has ever affected her work performance as a pharmacy technician, her excessive use of alcohol poses a risk of potential unfitness to safely perform her duties. It is well-established that, where a licensee has multiple convictions involving alcohol abuse, it is not necessary to wait until such behavior

manifests itself in the professional context before moving to protect the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757 773.) The Board has established legal cause to revoke respondent's license under Business and Professions Code section 4301, subdivisions (h), (k) and (l).

18. Respondent remains on informal probation through 2019. Positive conduct during time spent on probation is often accorded lesser weight when considering rehabilitation, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion . . . ." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) In this case, when all the evidence is considered, it is not necessary to revoke respondent's license outright to protect the public. The testimony of Ms. Anwar and Ms. Brune was credible and persuasive that respondent is a highly functional pharmacy technician who strives for perfection. There has never been any question or evidence that respondent has used alcohol, or demonstrated the effects of alcohol use, while at work. There has never been any issue, nor is there any allegation, that respondent has any unprofessional relationship regarding controlled substances or dangerous drugs.<sup>3</sup>

The conduct which resulted in respondent's 2015 misdemeanor conviction posed a serious risk to life and property. She had a similar high blood-alcohol conviction in 2009, prior to licensure. Respondent has great potential. She understands that her potential may never be actualized if she continues abusing alcohol. Respondent has accepted responsibility for her conduct and she admits that she has an alcohol problem. She has taken significant steps to ensure this behavior does not repeat itself by: completely stopping alcohol consumption, and changing her life style and friends from a focus on "partying" to a focus on health and healing. She has developed new mechanisms to address stress, and has taken substantial strides toward completing the probation requirements mandated by the criminal court. There is no evidence that respondent's alcohol use has affected her ability to carry out the functions and duties of a licensed pharmacy technician.

In addition to the positive steps she has taken so far, however, respondent's rehabilitation requires consistent and conscientious involvement in AA or similar type therapy. Respondent's testimony that she did not become more involved with AA over the last year due to her efforts to complete the DUI program while working full time was persuasive, with no suggestion of minimization or avoidance. Based on a review of the record as a whole, the public can be adequately protected by revoking respondent's license and allowing her to continue working under a probationary license subject to the terms and conditions outlined below. These include regular attendance at AA, a prohibition on alcohol use and random drug testing.

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<sup>3</sup> Board Inspector Wong testified that important qualities in a pharmacy technician include trustworthiness, adherence to the laws and good judgment. He acknowledged that there was no evidence respondent had used any controlled substances or dangerous drugs.

## Costs

19. Pursuant to section 125.3, subdivision (a), the Board may request an order directing a licensee “found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.” A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3, subd. (c).)

In support of its request for costs, complainant submitted her Certification of Costs of Investigation, signed December 19, 2016, reflecting total investigative costs of \$62.50. Complainant also submitted a Certification of Prosecution Costs: Declaration of Joshua B. Eisenberg, signed by Mr. Eisenberg on December 21, 2016. Mr. Eisenberg declared that, as indicated in the Department of Justice’s (DOJ’s) “Matter Time Activity by Professional Type,” the DOJ has billed the Board a total of \$2,662.50 for time spent by its legal staff on this matter. For the 2015 and 2016 Fiscal Years, this reflects a total of 2.0 paralegal hours and 14.25 attorney hours on the enforcement of this matter.

Based on these documents, complainant’s request that respondent be ordered to reimburse the Board a total of \$2,725 for its costs of investigative and enforcement is reasonable.

20. Respondent’s financial circumstances are limited. In discussing complainant’s request for cost, respondent noted that she has depleted her savings to pay for court costs arising from her recent conviction. In addition to the costs mentioned above, respondent has had to pay significant money for her attorneys. These costs are the natural consequences of respondent’s behavior and do not constitute a basis for reduction in the amount of reimbursement requested. Respondent testified that she is “definitely willing” to pay the costs requested, but asks that she be allowed to do so on a payment plan. Respondent will be ordered to pay the Board’s cost, pursuant to a payment plan.

## LEGAL CONCLUSIONS

1. *Burden and Standard of Proof*: In this action to discipline respondent’s pharmacist technician license, complainant bears the burden of proof on the charges alleged in the Accusation. The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Clear and convincing evidence means the evidence is “so clear as to leave no substantial doubt” and is “sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].) As explained below, complainant has met her burden.

2. *Unprofessional Conduct:* Under Business and Professions Code section 4301, the Board is required to take action against any licensee who is guilty of unprofessional conduct. The acts of unprofessional conduct alleged in this matter are as follows:

[¶] . . . [¶]

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

[¶] . . . [¶]

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

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to 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 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 contendere is deemed to be a conviction within the meaning of this provision. . . .

(Bus. & Prof. Code, § 4301.)

3. *Substantial Relationship:* California Code of Regulations, title 16, section 1770, provides that, for the purpose of suspension or revocation of a pharmacy technician's license, "a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770.) As set forth in Factual Findings 5, 6 and 17, respondent's convictions are substantially related to the qualifications, functions or duties of a pharmacy technician licensee. (Cal. Code Regs., tit. 16, § 1770.)

4. *Legal Cause to Discipline:* As set forth in the Factual Findings and Legal Conclusions as a whole, complainant has established legal cause to discipline respondent's license under Business and Professions Code section 4301, subdivisions (h), (k), and (l).

5. *Rehabilitation:* Rehabilitation is akin to an affirmative defense. Respondent bears the burden of establishing her rehabilitation. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) California Code of Regulations, title 16, section 1769, subdivision (c), provides:

When considering the suspension or revocation of . . . a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

In reaching a decision on a disciplinary action, the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 10/2007). (Cal. Code Regs., tit. 16, § 1760.) Deviation from these guidelines is appropriate where the Board, "in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems." (*Ibid.*) These Guidelines have been considered.

6. As set forth in the Factual Findings and Legal Conclusions as a whole, respondent provided sufficient persuasive evidence of rehabilitation to authorize her continued licensure on a probationary basis, subject to the terms and conditions outlined below.

7. *Costs*: Pursuant to *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, various factors must be considered in determining the amount of costs to be assessed. The Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee 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. The Board must consider the licensee's subjective good faith belief in the merits of his or her position, as well as whether the licensee has raised a colorable challenge to the proposed discipline. The Board must determine that the licensee will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct.

As discussed in Factual Findings 19 and 20, complainant's request that respondent reimburse the Board \$2,725 for its costs to investigate and enforce this matter is reasonable. There is no basis to reduce these costs. Respondent shall be ordered to pay the Board's costs in the total amount of it \$2,725, pursuant to a payment plan.

#### ORDER

Pharmacy technician license number TCH 114184 issued to Samantha Nicole Schmidt is revoked; however the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. **Obey All Laws**: Respondent shall obey all state and federal laws and regulations. **Respondent shall report any of the following occurrences to the board, in writing, within 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 in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime

- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician 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 any 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 at 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 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 or her probation. Failure to cooperate shall be considered a violation of probation.

5. **Notice to Employers:** During the period of probation, respondent shall notify all present and prospective employers of the decision in OAH case number 2016090864 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 fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in OAH case number 2016090864 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner

at every pharmacy of the terms and conditions of the decision in OAH case number 2016090864 in advance of the respondent commencing work at each pharmacy. 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 a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in OAH case number 2016090864 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

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

6. **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 \$ 2,725 . Respondent shall make said payments as follows: **Pursuant to a reasonable payment plan.** There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

7. **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.

8. **Status of License:** Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

9. **License Surrender While on Probation/Suspension:** Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the board for surrender. 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, 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 or her pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration 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.

10. **Notification of a Change in Name, Residence Address, Mailing Address or Employment:** Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

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

11. **Tolling 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 20 hours per calendar month, or as determined by the probation monitor. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 20 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 20 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. **Violation of Probation:** If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and 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.

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. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, 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.

13. **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 or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. 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.

14. **Random Drug Screening:** Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a

licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and 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, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

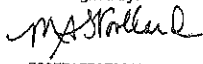
Failure to comply with this suspension shall be considered a violation of probation.

15. **Abstain from Drugs and Alcohol Use:** Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or 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, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

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16. **Completion of Probation:** Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: February 6, 2017

DocuSigned by:  
  
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MARILYN A. WOOLLARD  
Administrative Law Judge  
Office of Administrative Hearings



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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **SAMANTHA NICOLE SCHMIDT**  
13 **1019 Dornajo Way #253**  
**Sacramento, CA 95825**  
14 **Pharmacy Technician Registration No. TCH**  
15 **114184**  
16 Respondent.

Case No. 5777

**ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold ("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 October 20, 2011, the Board issued Pharmacy Technician Registration  
22 Number TCH 114184 to Samantha Nicole Schmidt ("Respondent"). The pharmacy technician  
23 registration was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on May 31, 2017, unless renewed.

25 **JURISDICTION/STATUTORY PROVISIONS**

- 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 ("Code") unless otherwise  
28 indicated.

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4. Code section 4300 states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

5. Code section 4300.1 states:

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

6. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . 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 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

....

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive

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

#### 8 COST RECOVERY

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

#### 13 FIRST CAUSE FOR DISCIPLINE

##### 14 (Criminal Conviction)

15 8. Respondent is subject to disciplinary action for unprofessional conduct pursuant to  
16 Code section 4301, subdivision (I), in that on or about December 21, 2015, in the criminal  
17 proceeding entitled *People vs. Samantha Nicole Schmidt* (Sacramento County Super. Ct., Case  
18 No. 15M14441), Respondent was convicted by the Court on her plea of nolo contendere of  
19 violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while having a blood  
20 alcohol of 0.08 percent and more), a misdemeanor, a crime substantially related to the  
21 qualifications, functions, and duties of a pharmacy technician. Respondent admitted that she had  
22 a blood alcohol of 0.15 percent or more within the meaning of Vehicle Code section 23578, and  
23 that the current offense occurred within ten years of a separate violation of Vehicle Code section  
24 23152, subdivision (b), which resulted in a conviction, as more particularly set forth in paragraph  
25 11 below. The circumstances of the crime are as follows: On or about August 28, 2015, a  
26 Sacramento Police Department Officer was driving northbound on 13<sup>th</sup> Street from S Street when  
27 he observed a Volkswagen Jetta partially in the southbound lane of traffic, with its front  
28 passenger side bumper resting against the rear bumper of a Chevrolet Silverado pickup truck.



1 The Volkswagen was running and the headlights were on, and it appeared that the Volkswagen  
2 had collided with the Chevrolet. The officer pulled his patrol car in behind the Volkswagen and  
3 approached the driver's side of the vehicle. The officer observed a female subject, later identified  
4 as Respondent, slumped over in the driver's seat. When the officer opened the driver door, it  
5 appeared that Respondent was unconscious in that her chin was resting against her chest, there  
6 was saliva hanging from her mouth, her skin was flush, and she did not respond to verbal or  
7 tactile stimulus. Respondent also had a strong odor of an alcoholic beverage coming from her  
8 person. The officer requested that the Sacramento Fire Department ("SFD") respond to assess  
9 Respondent's medical condition. Respondent eventually responded to verbal stimulus, but only  
10 with a non-verbal signal ("thumb's up"). The SFD arrived on scene and transported Respondent  
11 to UC Davis Medical Center. Respondent was unable to walk or stand, and the SFD had to carry  
12 her to the ambulance gurney. Once Respondent arrived at the medical center, she had no  
13 recollection of the events that had transpired. Respondent submitted a blood sample for chemical  
14 testing and was determined to have a blood alcohol of 0.24 percent.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Alcoholic Beverages to an Extent or in a Manner  
17 Dangerous or Injurious to Oneself, Others and the Public)**

18 9. Respondent is subject to disciplinary action for unprofessional conduct pursuant to  
19 Code section 4301, subdivision (h), in that on or about August 28, 2015, Respondent used  
20 alcoholic beverages to an extent or in a manner dangerous or injurious to herself, others, and the  
21 public, as set forth in paragraph 8 above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Conviction of More than one Misdemeanor  
24 Involving the Consumption of Alcoholic beverages)**

25 10. Respondent is subject to disciplinary action for unprofessional conduct pursuant to  
26 Code section 4301, subdivision (k), in that Respondent has been convicted of more than one  
27 misdemeanor involving the consumption of alcoholic beverages, as set forth in paragraph 8 above  
28 and 11 below.

1 MATTERS IN AGGRAVATION

2 11. To determine the degree of discipline to be assessed against Respondent, if any,  
3 Complainant alleges as follows: On or about April 18, 2011, the Board received an application  
4 for pharmacy technician registration from Respondent. Respondent admitted on her application  
5 that she had been convicted of a crime. On or about October 20, 2009, in Sacramento County  
6 Superior Court, Case No. 09T05579, Respondent was convicted by the Court on her plea of nolo  
7 contendere of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while  
8 having a blood alcohol of 0.08 percent and more), a misdemeanor, with an enhancement pursuant  
9 to Vehicle Code section 23578. The Court noted on the Minute Order/Plea form that  
10 Respondent's blood alcohol was .19 percent at the time of the incident. On or about October 20,  
11 2011, the Board issued Respondent a pharmacy technician registration, as set forth in paragraph 2  
12 above.

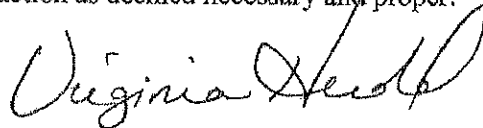
13 PRAYER

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

- 16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114184,  
17 issued to Samantha Nicole Schmidt;  
18 2. Ordering Samantha Nicole Schmidt to pay the Board of Pharmacy the reasonable  
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
20 Code section 125.3; and  
21 3. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: \_\_\_\_\_

8/11/16



24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
Complainant

SA2016101443