

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

In the Matter of the Accusation Against:

SHEREE LYN REED,

Pharmacist License No. RPH 68143,

Respondent.

Case No. 5631

OAH No. 2016080129

DECISION AFTER REJECTION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 19, 2016, in San Diego, California. Sherry L. Ledakis, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, California State Board of Pharmacy. John D. Bishop, Attorney at Law, represented respondent Sheree Lyn Reed, who was present throughout the administrative proceeding. The matter was submitted to the administrative law judge on December 19, 2016 and she prepared a Proposed Decision.

On April 24, 2017, pursuant to section 11517 of the Government Code, the board issued an Order rejecting the Proposed Decision of the administrative law judge. On May 30, 2017, the board issued an Order reflecting that the transcript had been received and the deadline for submission of written argument was set for June 29, 2017. New evidence was prohibited. Both parties timely submitted written argument. Respondent's newly submitted evidence was not considered.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument, now issues this decision.

SUMMARY

Respondent was convicted on August 27, 2015, of driving with a blood alcohol content (BAC) of 0.08 percent or greater on January 11, 2015, when she was involved in an accident while driving with a BAC of 0.20 percent.

Clear and convincing evidence established that respondent's alcohol-related conviction and underlying dangerous use of alcohol are substantially related to the qualifications, functions, and duties of a pharmacist. Respondent has demonstrated sufficient rehabilitation regarding her alcohol-related conviction to establish that she has undergone a period of recovery. Under the circumstances, placing respondent's pharmacist license on probation with appropriately restrictive terms and conditions will provide sufficient protection to the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent Sheree Lyn Reed became licensed as a pharmacist in California on October 2, 2012. Her license expires on January 31, 2018. On April 8, 2016, respondent received Citation Number CI 2015 69883 imposing a fine of \$750 from the Board of Pharmacy (board) for violation of California Code of Regulations, title 16, section 1707.2, subdivisions (a) and (b)(1), for failure to provide oral consultation to a patient. No other enforcement actions have been taken against respondent's license.

2. On June 10, 2016, Virginia Herold, complainant, signed the Accusation in her official capacity as the board's Executive Officer alleging two causes for discipline against respondent's license of a criminal conviction and dangerous use of alcohol. The Accusation and other required documents were served on respondent. Respondent timely filed a Notice of Defense.

Respondent's Conviction

3. On August 27, 2015, respondent was convicted in the Superior Court of California, County of Sonoma, in Case No. SCR-669164, of violating Vehicle Code, section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, a misdemeanor. This conviction arose as a result of respondent's actions on January 11, 2015.

As a result of this conviction, respondent was placed on three years' informal probation with various terms and conditions, including that she serve two days in jail with credit for one day served, attend and complete a three month first-offender driving under the influence (DUI) program, not drive with any measurable amount of alcohol in her blood, and pay fines and fees.

Circumstances of the Conviction

THE JANUARY 11, 2015, ARREST

4. On January 11, 2015, at 2:21 a.m. respondent was arrested for driving under the influence of alcohol.¹ According to the police report, while transporting a prisoner to jail officers

¹ These factual findings are based in part on information included in the police report received under *Lake v. Reed* (1997) 16 Cal.4th 448, which held that portions of a law enforcement

arrived on the scene of “a heavily traveled . . . arterial roadway which traverses north and south” and discovered a vehicle that was possibly involved in a traffic collision in the number two lane of the road with the driver asleep at the wheel. Officers observed that the passenger side front and rear tires of the vehicle were flat but saw no other noticeable damage to the vehicle. The officers observed respondent behind the wheel and suspected that she was intoxicated. Other officers then arrived on the scene to investigate as the original officers needed to transport their prisoner to jail. When an additional officer arrived at the scene, he observed that respondent demonstrated signs of intoxication including watery bloodshot eyes, slurred speech, and a strong odor of alcohol emanating from her person and her breath. In response to the question of whether or not she had been drinking, respondent stated that she had drunk two glasses of wine.

5. The police officer attempted to perform field sobriety tests (FSTs) on respondent at the scene “several times” but was unable to do so because she “was so intoxicated that she was unable to do the field sobriety tests.” Specifically, the officer observed that when he asked her to perform an FST, respondent would cry and plead with the officer not to hurt her. When she would agree to perform an FST, she “refused to cooperate” and “kept talking about her family and how she was abused.” The officer stated that he was “unable to calm her and unable to have her focus on completing the FST’s.” The officer wrote in the report that it was unclear what caused the passenger side front and rear tires of her vehicle to be deflated, but it was apparent that she had driven on the flat tires for a distance because “both tires were frayed.” The officer also wrote that “[i]t was apparent that the vehicle collided with a solid object which caused damage to the tires.”

6. At the jail, respondent agreed to have a blood test for a determination of her blood alcohol content (BAC). The result of the blood test was that respondent had 0.206 percent and 0.205 percent BAC from the same vial of blood tested twice.

Respondent’s Testimony

7. Respondent is 48 years old and, after receiving her pharmacy license in October 2012, has worked as a pharmacist for over four years. Prior to receiving her license as a pharmacist, respondent worked part-time for three years as an intern pharmacist performing many of the same tasks as a pharmacist, but without performing prescription verifications and without filling prescriptions for opioids and other regulated drugs. Respondent currently works as a floating staff pharmacist at CVS pharmacy and has held that position since July 2016. In that position she works at 20 different CVS pharmacy locations. Prior to working at CVS as a floating staff pharmacist, she worked at Safeway pharmacy as a staff pharmacist for eight months beginning in November 2015. Prior to her position at Safeway pharmacy, she worked from 2009 to November 2015 at CVS pharmacy as an intern pharmacist, staff pharmacist, and then as a pharmacist-in-charge.

8. Respondent testified that in her current position as a floating pharmacist, she receives a schedule from CVS showing her which location to go to for her work as a staff pharmacist. As a result of the fact that she works at 20 different stores as a floater staff

officer’s report are admissible in an administrative proceeding over a hearsay objection, including the officer’s observations and the party’s admissions.

pharmacist, she does not work with the same people on a routine basis. Her duties in her current position include filling prescriptions, overseeing the pharmacy technicians, counseling patients, and safeguarding the keys to the pharmacy. She stated that she stopped working for CVS in November 2015 because of the cost of living in the San Francisco Bay area and insufficient staff at CVS, and thereafter she began working for Safeway in San Diego for about eight months. She also stated that the work at CVS in the San Francisco Bay area was stressful because CVS in that area did not have sufficient staff to handle the number of prescriptions filled. She stated that she left Safeway to work as a floating staff pharmacist at CVS because the prescription verification and filling system at CVS was superior to Safeway's system in prevention of errors. Respondent testified that for one week prior to her hearing she moved into her own apartment located in Mission Valley. Prior to that she was living with her sister for about six months.

9. Respondent testified about the incident that resulted in her arrest on January 11, 2015, and her ultimate conviction. On January 10, 2015, she was at a pharmacy technician's home drinking alcohol. Respondent stated that she was interested in obtaining a job as a pharmacist with the state of California prison systems because she understood that it was a nice place to work. Respondent knew that the pharmacy technician's mother "had a connection with the prison system" and as a result respondent agreed to accept a dinner invitation at the home of the pharmacy technician. Respondent knew at the time she accepted the invitation that the pharmacy technician "was a tad troubled," but decided to go to the pharmacy technician's home on a Saturday night for dinner anyway. Respondent admitted to drinking "maybe three glasses of wine," but she was not sure of that number, and thereafter drank an unknown number of fruity drinks containing hard alcohol. Respondent stated that the group of people at the home decided that respondent should stay at the home because she had been drinking. At some point later in the night, respondent "got annoyed and wanted to leave" and got into her car and drove away. Respondent stated that she was not familiar with the area where the pharmacy technician lived and was confused as to her location. She stated that she was driving on a frontage road next to a freeway and heard a loud bang noise and realized that she had hit the curb and her tires were flat. Respondent testified that she remembered "some of the incident" but that she was "so intoxicated" that she "lost [her] emotional control." Respondent stated that she remembered crying and pleading with the officer not to hurt her. Respondent admitted that her level of intoxication on that night could have impaired her ability to remember what happened.

10. After respondent was arrested and charged with crimes, she entered a plea of no contest to some of the charges and the remaining charges were dismissed. She was ordered to attend a three month first offender DUI program, which consisted of two hour meetings once a week where they watched videos, listened to speakers from Alcoholics Anonymous (AA), and attended group sessions with about 10 to 15 people. Respondent found the group sessions to be helpful because she came to realize that if a person starts to have consequences from drinking alcohol, they may want to think about their drinking. Respondent stated that she does not have a problem with alcoholism because she does not need alcohol, but that she no longer drinks alcohol because alcohol "put [her] in danger" and because she feels better now that she does not drink alcohol. Respondent testified that she has been sober since July 2016 when she was served with the accusation in this case. She stated that she does not need to take steps to maintain sobriety because she does not feel like she needs alcohol and does not struggle with cravings for alcohol.

11. Respondent testified that after she was convicted, she realized that the people with whom she was associating were affecting her, and that she should not be associating with people who want to drink alcohol all the time. She stated that after the conviction she moved from Northern California to Southern California to be near family and friends and the move has helped her. She stated that she no longer hangs around people who drink alcohol to “blow off steam” and she no longer drinks alcohol to relieve stress like she did when she lived in Northern California. She stated that now she spends a lot of time with her sister and nieces.

12. Respondent testified that she understands why the board is concerned about the risk to the public as a result of her alcohol use and conviction. She is willing to comply with any terms and conditions that may be placed on her license, however she does not believe that any supervision requirement is necessary. She stated that any supervision requirement would place her current employment at risk because employers do not want to hire another pharmacist to “babysit” a pharmacist. She stated that pharmacists work alone and any supervision restriction would jeopardize her ability to be employed.

13. Respondent also attended and completed a five hour stress management course on-line on October 23, 2016. She stated that she voluntarily took this on-line class because she wanted to see how she was doing with her stress level.

14. On September 10, 2015, respondent completed the court-ordered three month first offender DUI program. Documents received into evidence demonstrate that respondent enrolled in the three month program on May 6, 2015, well prior to her August 27, 2015, conviction.

15. Respondent continues to pay \$75 per month towards the court-ordered fines and fees totaling \$2,242 resulting from her conviction. She stated that she is currently up to date with all of these payments.

Respondent's Other Evidence

16. Respondent provided seven character reference letters from various individuals. All of those letters were drafted by people who were aware of respondent's conviction at the time they drafted the letters. One letter was written by respondent's current supervisor at CVS, one by respondent's current co-worker pharmacist, two letters were written by respondent's supervisor while she was employed at Safeway, one letter was written by respondent's professor and Assistant Dean at the Touro University California College of Pharmacy where respondent attended school, one letter was written by respondent's sister, and another by a close family friend of 30 years. All of the letters praised respondent's professionalism and knowledge as a pharmacist, as well as her good character. Many of the letters, including from her previous and current supervisors, stressed that respondent is trustworthy and that any type of supervised practice placed on her license is not necessary.

17. Respondent also provided a letter from Larry Merlo, the President and CEO of CVS Health, dated May 11, 2015. The letter was written prior to respondent's August 27, 2015, conviction. The letter stated that in recognition of respondent's contributions to CVS, she was granted an individual CVS Health stock option award in the amount of \$1,000.

18. Respondent also produced a print-out of an on-line history of her employment at CVS from its Human Resources website. The document provided a timeline of events in her employment including promotions and pay rate changes from May 25, 2008, to July 22, 2016.

19. Respondent's current annual income is approximately \$68,400. Respondent testified about her current monthly income and typical monthly expenses.

Costs

20. The Attorney General's Office filed a Certification of Prosecution Costs pursuant to Business and Professions Code section 125.3 seeking cost recovery in the amount of \$3,190 in legal fees.

21. In determining whether respondent should be compelled to pay the board's costs, one must consider whether the costs are reasonable. The declaration submitted by the Deputy Attorney General in support of the costs of prosecution describes the tasks performed, identifies who performed them, and specifies the time spent on the tasks. Based upon the nature of this case and the amount of time spent on the case, the cost of prosecution of \$3,190 is reasonable. Complainant provided no evidence regarding any costs specifically related to investigation.

Evaluation

22. On January 11, 2015, respondent consumed alcohol and drove a vehicle in a manner that was potentially injurious and dangerous to herself and to others. On that date, she had consumed a substantial amount of alcohol (with a BAC of 0.20 percent) that made her unable to drive safely. She had a collision with some object while driving under the influence of alcohol and was unable to cooperate with police officers as a result of her state of intoxication. She admitted that she was so intoxicated that she was unable to remember details of the incident.

23. Respondent asserts that she has not consumed alcohol since July 2016. However, she was unable to provide an exact date of sobriety other than a general month, and she takes no steps to maintain her sobriety because she believes she does not need to take any such steps. Respondent failed to provide any documents or other evidence to support her testimony that she no longer drinks alcohol and has not done so since July 2016. She does not currently participate in any alcohol treatment program and does not attend AA.

24. Respondent testified that she has moved away from friends who drink alcohol "all the time" and she now spends a significant amount of her free time with her sister and nieces. She testified that her stress level is less than it was when she lived in Northern California and that since she has moved to Southern California she no longer drinks alcohol to relieve stress.

25. Respondent is commended for her efforts to remain sober and refrain from any alcohol consumption. She has only incurred one arrest and conviction related to alcohol consumption. However, her level of intoxication on January 11, 2015, was very high (BAC of 0.20 percent) and she made the very poor decision to drive a vehicle while in that extreme state of

intoxication. While she testified that she has not consumed alcohol since July 2016 and will no longer consume alcohol, she has provided no corroborating evidence of her sobriety and no real assurances that she will continue to remain sober. She has taken no additional steps, such as treatment or attendance to AA meetings or therapy, to ensure that she will no longer consume alcohol to a dangerous degree. It would, thus, be contrary to public interest to allow respondent to practice as a pharmacist without assurances and monitoring to verify her sobriety. Respondent has produced sufficient evidence to demonstrate that she has made strides to improve her life and remain sober such that placing her license on probation with appropriately restrictive terms and conditions will provide sufficient protection to the public.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. An individual who holds a license to practice a particular profession has a fundamental vested right to continue in that licensed activity. Procedural due process requires a regulatory board or agency seeking to suspend or revoke a professional license to prove the allegations of an accusation by clear and convincing evidence rather than proof by a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 991-992.) The burden of proof in this matter was on Complainant to establish the allegations in the accusation by clear and convincing evidence.

2. Clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt; it must be sufficiently strong to command the unhesitating assent of every reasonable mind. This requirement presents a heavy burden, far in excess of the preponderance of evidence standard that is sufficient for most civil litigation. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Imposing License Discipline

3. The suspension or revocation of a license to engage in a profession is not penal; its purpose is to protect the public from incompetence and lack of integrity in those practicing the profession. The business of compounding prescriptions and selling drugs is intimately connected with and has a vital relationship to the health, safety, and welfare of the public. Public safety must be regarded as superior to private rights. (*Brodsky v. California State Board of Pharmacy* (1959) 173 Cal.App.2d 680, 688-689.)

4. Business and Professions Code section 4101.1 provides:

Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Applicable Statutes

5. Business and Professions Code section 490 provides in part:

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

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

(c) A conviction within the meaning of this section means a plea . . . of guilty. . . . Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed. . . .

6. Business and Professions Code section 4300 provides in part: "(a) Every license issued may be suspended or revoked."

7. Business and Professions Code section 4301 provides in 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.

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this

Substantial Relationship

8. To justify the imposition of discipline, there must be some nexus between an act or omission and the professional's fitness or competence to practice. The Legislature has established such a nexus with respect to certain acts or omissions even where the acts or omissions do not actually impair a professional's ability to practice. It does so by expressly identifying the act or omission as an instance of "unprofessional conduct." (*Medical Bd. of California v. Superior Court (Liskey)* (2003) 111 Cal.App.4th 163, 174.)

A determination that a licensee's conviction justifies discipline cannot rest on the moral reprehensibility of the underlying conduct, but requires a reasoned determination that the conduct was in fact substantially related to the licensee's fitness to engage in the profession. Licensing authorities enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to "develop criteria to aid it . . . to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates." (*Donaldson v. Department of Real Estate of State of Cal.* (2005) 134 Cal.App.4th 948, 955-956.)

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

For the purpose of denial, suspension, or revocation of a personal or facility license . . . 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.

10. Pharmacists must scrupulously exercise good judgment, particularly with regard to dangerous substances and alcohol. The Legislature specifically provided in Business and Professions Code section 4301, subdivision (h), that the use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself or others, is grounds for license discipline. California Code of Regulations, title 16, section 1770, provides that any crime or act shall be considered substantially related to the qualifications of a licensee if to a substantial degree it evidences present or potential unfitness. The dangerous use of alcohol need not occur as part of the licensee's practice of pharmacy. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771-772.)

Under the express language of Business and Professions Code section 4301, subdivisions (h) and (l), and the clear intent of the regulation, respondent's misdemeanor DUI conviction constituted unprofessional conduct and is substantially related to the qualifications, functions, and duties of a pharmacist. This conclusion is based on factual findings and on legal conclusions set forth herein.

Cause Exists to Impose Discipline Against Respondent's License

11. First Cause for Discipline: Cause exists under Business and Professions Code sections 490 and 4301, subdivision (l), to impose discipline on respondent's license. The clear and convincing evidence established that respondent was convicted of the misdemeanor offense of driving under the influence of alcohol, from her actions on January 11, 2015, and that this crime is substantially related to the qualifications, functions, and duties of a pharmacist. This conclusion is based on the factual findings and legal conclusions herein.

12. Second Cause for Discipline: Cause exists under Business and Professions Code sections 490 and 4301, subdivision (h), to impose discipline on respondent's license. The clear and convincing evidence established that respondent used alcoholic beverages in a manner and to an extent that was dangerous or injurious to herself and to the public. This conclusion is based on the factual findings and legal conclusions herein.

Rehabilitation

13. California Code of Regulations, title 16, section 1769, sets forth criteria for rehabilitation. It provides in part:

(c) When considering the suspension or revocation of a facility or 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.

14. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

Disciplinary Guidelines

15. California Code of Regulations, title 16, section 1760, provides that in reaching a decision in a disciplinary action under the Administrative Procedure Act, the board must consider its Recommended Guidelines for Disciplinary Orders and Conditions of Probation (guidelines). Deviation from the guidelines is appropriate when the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation, for example: the presence of mitigating factors, the age of the case, or evidentiary problems in the case.

16. Under the guidelines, the recommended discipline for violation of Business and Professions Code section 4301, subdivisions (h) and (l), unprofessional conduct, ranges from a minimum discipline of revocation, stayed, three years' probation, to a maximum disciplinary order of revocation.

17. The board's guidelines provide criteria to consider in determining the appropriate level of discipline, including: The nature and severity of the acts under consideration, the number and/or variety of current violations, the actual or potential harm to the public, the actual or potential harm to any consumer, respondent's prior disciplinary record, evidence of mitigation and rehabilitation, and the amount of time that has passed since the occurrence of the acts under consideration.

18. The guidelines permit respondent to present evidence demonstrating her rehabilitative or corrective efforts and competency, such as:

A) Recently dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice of pharmacy. Each statement should include the period of time and capacity in which the person worked with the respondent and should be signed under the penalty of perjury and subject to verification.

(B) Recently dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program. These should include a description of the program, a psychologist's diagnosis of respondent's condition and current state of recovery, and the psychologist's basis for determining rehabilitation.

(C) Recently dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.

(D) Recently dated laboratory analyses or drug screen reports, confirming abstention from drugs and alcohol.

(E) Recently dated physical examination or assessment report by a licensed physician confirming the absence of any physical impairment that would prohibit respondent from practicing safely.

(F) Recently dated letters from probation or parole officers regarding respondent's participation in and/or compliance with terms and conditions of probation or parole. The letter should include a description of the terms and conditions and the officer's basis for determining compliance.

The Application of Facts to Law

19. Respondent drank alcohol to excess on January 10, 2015, and the early morning of January 11, 2015. Her judgment became so impaired that she drove a car with a BAC of 0.20 percent. She was found sleeping in her car on an active roadway, and she had a collision with her vehicle resulting in two flat tires. Respondent was so intoxicated at the time of her arrest that she was incapable of cooperating with the police officer to perform field sobriety tests and started crying uncontrollably. Her use of alcohol on that date resulted in potential harm to the public as well as herself. Even though respondent has made efforts toward establishing and maintaining her sobriety over the past six months or so, she has provided no evidence to corroborate her asserted sobriety date, no evidence from a physician regarding her alcohol use, and no evidence of any continuing therapy from a counselor or therapist regarding her current state of sobriety. Respondent currently takes no steps to ensure that she will not consume alcohol to excess in the future. She did provide evidence that she is currently receiving good reviews for her work as a pharmacist and has not had any work related incidents since her conviction. She provided multiple letters to demonstrate her good character, professionalism, and knowledge as a pharmacist. She has complied with the terms of her probation, and she remains on criminal probation until 2018. However, she states she has only refrained from the consumption of alcohol for about six months, even though she was convicted about one and a half years ago. She remains on criminal probation. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

The mitigating evidence that respondent produced and her evidence of rehabilitation were insufficient to support a conclusion that she presently possesses the sobriety required to practice pharmacy safely without probationary terms and conditions to ensure public protection. Public safety need not be placed at risk to enable respondent to establish that she has changed her ways. The laws are designed to protect the public before a licensee harms a patient rather than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771.) Addiction is not required to merit the imposition of abuse-related probationary terms. The circumstances of respondent's drinking and driving weigh against the mitigation evidence and warrant caution for a licensee with unfettered access to, and ultimate responsibility for distributing, dangerous drugs, including controlled substances, where the impact of misuse or abuse, even after any inebriation subsides, could impact a pharmacist's ability to perform her duties.

The board is guided by statutes that mandate that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public must be paramount. (Bus. & Prof. Code, §§ 4001.1 and 4313.) Recent statutory requirements also reflect the Legislature’s concerns with the risks associated with health care providers that may abuse drugs or alcohol. (Bus. & Prof. Code, § 315 et seq.)

Public protection will be served in this case if respondent’s license is placed on probation for four years with appropriate terms and conditions, including the requirements that she abstain from the use of alcohol, undergo random bodily fluid tests for the presence of alcohol or unauthorized drugs, and participate in the board’s monitoring program. Such terms will ensure that respondent will be sober and will minimize the risk to the public. Given the other terms of probation, the evidence of only a single incident of dangerous use of alcohol, the absence of evidence of alcohol use while working as a pharmacist, and a good work record with recommendations from her current supervisor, the term for supervision of her work as a pharmacist will not be required.

Costs of Prosecution

20. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law . . . upon request of the entity bringing the proceeding, the administrative law judge may 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.

21. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the regulation imposing costs for investigation and enforcement under Title 16, California Code of Regulations, section 317.5 (which is similar to Bus. & Prof. Code § 125.3) did not violate due process in a case involving the discipline of a chiropractor. But, it was incumbent on the State Board of Chiropractic Examiners to exercise its discretion to reduce or eliminate cost awards in a manner that ensured that section 317.5 did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.”

The Supreme Court set forth five factors that the State Board of Chiropractic Examiners was required to consider in deciding whether to reduce or eliminate costs: (1) whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a “subjective” good faith belief in the merits of his position; (3) whether the chiropractor raised a “colorable challenge” to the proposed discipline; (4) whether the chiropractor had the financial ability to make payments; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

The *Zuckerman* criteria were applied in this matter, and it is concluded that issuing an order directing respondent to pay the board’s costs of prosecution in this matter will not have a chilling effect on future respondents’ exercise of their right to a hearing. Respondent shall be required to pay \$3,190 in prosecution costs.

ORDER

Pharmacist License No. RPH 68143, issued to Sheree Lyn Reed is revoked; however, the revocation is stayed and respondent is placed on probation for four 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 pharmacist 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 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 her probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of this decision 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 this decision, and 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.

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 entity licensed by the board of the terms and conditions of this decision in advance of the respondent commencing work at each 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 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 this decision 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 acknowledgments 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, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. 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 \$3,190. Respondent shall make said payment in installments as set forth by the board.

There shall be no deviation from the installment payment schedule set forth by the board 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 prosecution.

9. 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.

10. Status of License

Respondent shall, at all times while on probation, maintain an active, current 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 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.

11. 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 tender his or her 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 pocket and wall 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 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.

12. 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, 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.

13. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month. 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 practicing as a pharmacist for a minimum of 80 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. 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.

14. Violation of Probation

If 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.

15. 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 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

During suspension respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

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.

16. 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.

17. Pharmacists Recovery Program (PRP)

Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board or its designee. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete his or her current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation. Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the board. Respondent may not resume the practice of pharmacy until notified by the board in writing.

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 result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the board in writing. During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and 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, manufacturing or dispensing of dangerous drugs and controlled substances.

Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

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.

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

18. Completion of Probation

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

This Decision shall become effective at 5:00 p.m. on September 25, 2017.

It is so ORDERED on August 26, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amarylis "Amy" Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

SHEREE LYN REED

Pharmacist License No. RPH 68143,

Respondent.

Board Case No. 5631

OAH No. 2016080129

NOTICE OF REQUEST FOR TRANSCRIPT

On April 24, 2017, the California State Board of Pharmacy (hereinafter "board") issued its Order rejecting the proposed decision in this matter, and proposing a waiver of transcripts. On May 5, 2017, Respondent timely filed a Notice of Objection to Waiver of Transcripts. As a result, the transcript will be ordered.

The 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. A copy of the record will be made available to each party at that time. The board may require payment of fees to cover the copying and mailing costs of the transcript and exhibits.

IT IS SO ORDERED this 9th day of May, 2017.



By

Amarylis "Amy" Gutierrez, Pharm.D.
Board President
California State Board of Pharmacy

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

In the Matter of the Accusation Against:

SHEREE LYN REED

Pharmacist License No. RPH 68143,

Respondent.

Board Case No. 5631

OAH No. 2016080129

**ORDER REJECTING PROPOSED DECISION
AND PROPOSING WAIVER OF TRANSCRIPT**

Pursuant to Government Code section 11517, subdivision (c), the Proposed Decision of the Administrative Law Judge in the above-entitled case is rejected. The California State Board of Pharmacy will decide the case upon the record, and upon such written argument as the parties may wish to submit.

The right to argue on any matter is limited to the facts as presented in the record. No new evidence may be submitted. However, the board is especially interested in arguments as to whether, in order to protect the public, and considering Business and Professions Code section 315, *et seq.*, a term requiring the Pharmacists Recovery Program should be required during respondent's probationary period. Stated alternately, the question is whether the board's standard term regarding such matters (Optional Term 21 for pharmacists) from its Disciplinary Guidelines should be imposed, so that, at a minimum, an expert in substance abuse evaluates respondent. (Disciplinary Guidelines, rev. 10/2007, p. 33.)

The board believes the issue above may be addressed without a review of the transcript of the hearing held. Unless the parties object in writing, it will be assumed the parties stipulate that the board may decide the case upon the record without including the transcript. The record will also include any written argument as the parties may wish to submit. In the event any party objects to not ordering the transcript, it should file a notice of objection to the stipulation by **May 8, 2017**, with a copy to the other party. The notice of objection may be served on the board at **1625 N. Market Blvd, N219, Sacramento, CA 95834, Attention Susan Cappello, Enforcement Manager.**

If no party objects to the stipulation regarding the transcript, the parties shall have until **May 24, 2017**, to submit written argument.

In the event any party objects to the stipulation, the transcript will be ordered and the parties will be notified of a revised date for submission of such argument when the transcript of the above-mentioned hearing becomes available. In that case, a copy of the record will be provided to you at the time of notification of the final filing date for written argument (the board may require payment of fees to cover the copying and mailing costs of the transcript and exhibits).

IT IS SO ORDERED this 24th day of April, 2017.



By

Amarylis "Amy" Gutierrez, Pharm.D.
Board President
California State Board of Pharmacy

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

In the Matter of the Accusation Against:

SHEREE LYN REED,

Pharmacist License No. RPH 68143,

Respondent.

Case No. 5631

OAH No. 2016080129

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 19, 2016, in San Diego, California.

Sherry L. Ledakis, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

John D. Bishop, Attorney at Law, represented respondent Sheree Lyn Reed, who was present throughout the administrative proceeding.

The matter was submitted on December 19, 2016.

SUMMARY

Respondent was convicted on August 27, 2015, of driving with a blood alcohol content (BAC) of 0.08 percent or greater on January 11, 2015, when she was involved in an accident while driving with a BAC of 0.20 percent.

Clear and convincing evidence established that respondent's alcohol-related conviction and underlying dangerous use of alcohol are substantially related to the qualifications, functions, and duties of a pharmacist. Respondent has demonstrated sufficient rehabilitation regarding her alcohol-related conviction to establish that she has undergone a meaningful and sustained period of recovery. Under the circumstances, placing respondent's pharmacist license on probation with appropriate terms and conditions will provide sufficient protection to the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent Sheree Lyn Reed became licensed as a pharmacist in California on October 2, 2012. Her license expires on January 31, 2018. On April 8, 2016, respondent received Citation Number CI 2015 69883 imposing a fine of \$750 from the Board of Pharmacy (board) for violation of California Code of Regulations, title 16, sections 1707.2 and 1707.2, subdivision (b)(1), for failure to provide oral consultation to a patient. No other prior disciplinary action has been taken against respondent's license.

2. On June 10, 2016, Virginia Herold, complainant, signed the Accusation in her official capacity as the board's Executive Officer alleging two causes for discipline against respondent's license of a criminal conviction and dangerous use of alcohol. The Accusation and other required documents were served on respondent. Respondent timely filed a Notice of Defense.

Respondent's Conviction

3. On August 27, 2015, respondent was convicted in the Superior Court of California, County of Sonoma, in Case No. SCR-669164, of violating Vehicle Code, section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, a misdemeanor. This conviction arose as a result of respondent's actions on January 11, 2015.

As a result of this conviction, respondent was placed on three years' informal probation with various terms and conditions, including that she serve two days in jail with credit for one day served, attend and complete a three month first-offender driving under the influence (DUI) program, not drive with any measurable amount of alcohol in her blood, and pay fines and fees.

Circumstances of the Conviction

THE JANUARY 11, 2015, ARREST

4. On January 11, 2015, at 2:21 a.m. respondent was arrested for driving under the influence of alcohol.¹ According to the police report, while transporting a prisoner to jail officers arrived on the scene of "a heavily traveled . . . arterial roadway which traverses north and south" and discovered a vehicle that was possibly involved in a traffic collision in the number two lane of the road with the driver asleep at the wheel. Officers observed that the passenger side front and rear tires of the vehicle were flat but saw no other noticeable

¹ These factual findings are based in part on information included in the police report received under *Lake v. Reed* (1997) 16 Cal.4th 448, which held that portions of a law enforcement officer's report are admissible in an administrative proceeding over a hearsay objection, including the officer's observations and the party's admissions.

damage to the vehicle. The officers observed respondent behind the wheel and suspected that she was intoxicated. Other officers then arrived on the scene to investigate as the original officers needed to transport their prisoner to jail. When an additional officer arrived at the scene, he observed that respondent demonstrated signs of intoxication including watery bloodshot eyes, slurred speech, and a strong odor of alcohol emanating from her person and her breath. In response to the question of whether or not she had been drinking, respondent stated that she had drunk two glasses of wine.

5. The police officer attempted to perform field sobriety tests (FSTs) on respondent at the scene "several times" but was unable to do so because she "was so intoxicated that she was unable to do the field sobriety tests." Specifically, the officer observed that when he asked her to perform an FST, respondent would cry and plead with the officer not to hurt her. When she would agree to perform an FST, she "refused to cooperate" and "kept talking about her family and how she was abused." The officer stated that he was "unable to calm her and unable to have her focus on completing the FST's." The officer wrote in the report that it was unclear what caused the passenger side front and rear tires of her vehicle to be deflated, but it was apparent that she had driven on the flat tires for a distance because "both tires were frayed." The officer also wrote that "[i]t was apparent that the vehicle collided with a solid object which caused damage to the tires."

6. At the jail, respondent agreed to have a blood test for a determination of her blood alcohol content (BAC). The result of the blood test was that respondent had 0.206 percent and 0.205 percent BAC from the same vial of blood tested twice.

Respondent's Testimony

7. Respondent is 48 years old and, after receiving her pharmacy license in October 2012, has worked as a pharmacist for over four years. Prior to receiving her license as a pharmacist, respondent worked part-time for three years as an intern pharmacist performing many of the same tasks as a pharmacist, but without performing prescription verifications and without filling prescriptions for opioids and other regulated drugs. Respondent currently works as a floating staff pharmacist at CVS pharmacy and has held that position since July 2016. In that position she works at 20 different CVS pharmacy locations. Prior to working at CVS as a floating staff pharmacist, she worked at Safeway pharmacy as a staff pharmacist for eight months beginning in November 2015. Prior to her position at Safeway pharmacy, she worked from 2009 to November 2015 at CVS pharmacy as an intern pharmacist, staff pharmacist, and then as a pharmacist-in-charge.

8. Respondent testified that in her current position as a floating pharmacist, she receives a schedule from CVS showing her which location to go to for her work as a staff pharmacist. As a result of the fact that she works at 20 different stores as a floater staff pharmacist, she does not work with the same people on a routine basis. Her duties in her current position include filling prescriptions, overseeing the pharmacy technicians, counseling patients, and safeguarding the keys to the pharmacy. She stated that she stopped working for CVS in November 2015 because of the cost of living in the San Francisco Bay

area and insufficient staff at CVS, and thereafter she began working for Safeway in San Diego for about eight months. She also stated that the work at CVS in the San Francisco Bay area was stressful because CVS in that area did not have sufficient staff to handle the number of prescriptions filled. She stated that she left Safeway to work as a floating staff pharmacist at CVS because the prescription verification and filling system at CVS was superior to Safeway's system in prevention of errors. Respondent testified that for one week prior to her hearing she moved into her own apartment located in Mission Valley. Prior to that she was living with her sister for about six months.

9. Respondent testified about the incident that resulted in her arrest on January 11, 2015, and her ultimate conviction. On January 10, 2015, she was at a pharmacy technician's home drinking alcohol. Respondent stated that she was interested in obtaining a job as a pharmacist with the state of California prison systems because she understood that it was a nice place to work. Respondent knew that the pharmacy technician's mother "had a connection with the prison system" and as a result respondent agreed to accept a dinner invitation at the home of the pharmacy technician. Respondent knew at the time she accepted the invitation that the pharmacy technician "was a tad troubled," but decided to go to the pharmacy technician's home on a Saturday night for dinner anyway. Respondent admitted to drinking "maybe three glasses of wine," but she was not sure of that number, and thereafter drank an unknown number of fruity drinks containing hard alcohol. Respondent stated that the group of people at the home decided that respondent should stay at the home because she had been drinking. At some point later in the night, respondent "got annoyed and wanted to leave" and got into her car and drove away. Respondent stated that she was not familiar with the area where the pharmacy technician lived and was confused as to her location. She stated that she was driving on a frontage road next to a freeway and heard a loud bang noise and realized that she had hit the curb and her tires were flat. Respondent testified that she remembered "some of the incident" but that she was "so intoxicated" that she "lost [her] emotional control." Respondent stated that she remembered crying and pleading with the officer not to hurt her. Respondent admitted that her level of intoxication on that night could have impaired her ability to remember what happened.

10. After respondent was arrested and charged with crimes, she entered a plea of no contest to some of the charges and the remaining charges were dismissed. She was ordered to attend a three month first offender DUI program, which consisted of two hour meetings once a week where they watched videos, listened to speakers from Alcoholics Anonymous (AA), and attended group sessions with about 10 to 15 people. Respondent found the group sessions to be helpful because she came to realize that if a person starts to have consequences from drinking alcohol, they may want to think about their drinking. Respondent stated that she does not have a problem with alcoholism because she does not need alcohol, but that she no longer drinks alcohol because alcohol "put [her] in danger" and because she feels better now that she does not drink alcohol. Respondent testified that she has been sober since July 2016 when she was served with the accusation in this case. She stated that she does not need to take steps to maintain sobriety because she does not feel like she needs alcohol and does not struggle with cravings for alcohol.

11. Respondent testified that after she was convicted, she realized that the people with whom she was associating were affecting her, and that she should not be associating with people who want to drink alcohol all the time. She stated that after the conviction she moved from Northern California to Southern California to be near family and friends and the move has helped her. She stated that she no longer hangs around people who drink alcohol to "blow off steam" and she no longer drinks alcohol to relieve stress like she did when she lived in Northern California. She stated that now she spends a lot of time with her sister and nieces.

12. Respondent testified that she understands why the board is concerned about the risk to the public as a result of her alcohol use and conviction. She is willing to comply with any terms and conditions that may be placed on her license, however she does not believe that any supervision requirement is necessary. She stated that any supervision requirement would place her current employment at risk because employers do not want to hire another pharmacist to "babysit" a pharmacist. She stated that pharmacists work alone and any supervision restriction would jeopardize her ability to be employed.

13. Respondent also attended and completed a five hour stress management course on-line on October 23, 2016. She stated that she voluntarily took this on-line class because she wanted to see how she was doing with her stress level.

14. On September 10, 2015, respondent completed the court-ordered three month first offender DUI program. Documents received into evidence demonstrate that respondent enrolled in the three month program on May 6, 2015, well prior to her August 27, 2015, conviction.

15. Respondent continues to pay \$75 per month towards the court-ordered fines and fees totaling \$2,242 resulting from her conviction. She stated that she is currently up to date with all of these payments.

Respondent's Other Evidence

16. Respondent provided seven character reference letters from various individuals. All of those letters were drafted by people who were aware of respondent's conviction at the time they drafted the letters. One letter was written by respondent's current supervisor at CVS, one by respondent's current co-worker pharmacist, two letters were written by respondent's supervisor while she was employed at Safeway, one letter was written by respondent's professor and Assistant Dean at the Touro University California College of Pharmacy where respondent attended school, one letter was written by respondent's sister, and another by a close family friend of 30 years. All of the letters praised respondent's professionalism and knowledge as a pharmacist, as well as her good character. Many of the letters, including from her previous and current supervisors, stressed that respondent is trustworthy and that any type of supervised practice placed on her license is not necessary.

17. Respondent also provided a letter from Larry Merlo, the President and CEO of CVS Health, dated May 11, 2015. The letter was written prior to respondent's August 27, 2015, conviction. The letter stated that in recognition of respondent's contributions to CVS, she was granted an individual CVS Health stock option award in the amount of \$1,000.

18. Respondent also produced a print-out of an on-line history of her employment at CVS from its Human Resources website. The document provided a timeline of events in her employment including promotions and pay rate changes from May 25, 2008, to July 22, 2016.

19. Respondent's current annual income is approximately \$68,400. Respondent testified about her current monthly income and typical monthly expenses.

Costs

20. The Attorney General's Office filed a Certification of Prosecution Costs pursuant to Business and Professions Code section 125.3 seeking cost recovery in the amount of \$3,190 in legal fees.

21. In determining whether respondent should be compelled to pay the board's costs, one must consider whether the costs are reasonable. The declaration submitted by the Deputy Attorney General in support of the costs of prosecution describes the tasks performed, identifies who performed them, and specifies the time spent on the tasks. Based upon the nature of this case and the amount of time spent on the case, the cost of prosecution of \$3,190 is reasonable. Complainant provided no evidence regarding any costs specifically related to investigation.

Evaluation

22. On January 11, 2015, respondent consumed alcohol and drove a vehicle in a manner that was potentially injurious and dangerous to herself and to others. On that date, she had consumed a substantial amount of alcohol (with a BAC of 0.20 percent) that made her unable to drive safely. She had a collision with some object while driving under the influence of alcohol and was unable to cooperate with police officers as a result of her state of intoxication. She admitted that she was so intoxicated that she was unable to remember details of the incident.

23. Respondent asserts that she has not consumed alcohol since July 2016. However, she was unable to provide an exact date of sobriety other than a general month, and she takes no steps to maintain her sobriety because she believes she does not need to take any such steps. Respondent failed to provide any documents or other evidence to support her testimony that she no longer drinks alcohol and has not done so since July 2016. She does not currently participate in any alcohol treatment program and does not attend AA.

24. Respondent testified that she has moved away from friends who drink alcohol "all the time" and she now spends a significant amount of her free time with her sister and nieces. She testified that her stress level is less than it was when she lived in Northern California and that since she has moved to Southern California she no longer drinks alcohol to relieve stress.

25. Respondent is commended for her efforts to remain sober and refrain from any alcohol consumption. She has only incurred one arrest and conviction related to alcohol consumption. However, her level of intoxication on January 11, 2015, was very high (BAC of 0.20 percent) and she made the very poor decision to drive a vehicle while in that extreme state of intoxication. While she testified that she has not consumed alcohol since July 2016 and will no longer consume alcohol, she has provided no corroborating evidence of her sobriety and no real assurances that she will continue to remain sober. She has taken no additional steps, such as treatment or attendance to AA meetings or therapy, to insure that she will no longer consume alcohol to a dangerous degree. It would, thus, be contrary to public interest to allow respondent to practice as a pharmacist without assurances that she will continue to remain sober. Respondent has produced sufficient evidence to demonstrate that she has made strides to improve her life and remain sober such that placing her license on probation with appropriate terms and conditions will provide sufficient protection to the public.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. An individual who holds a license to practice a particular profession has a fundamental vested right to continue in that licensed activity. Procedural due process requires a regulatory board or agency seeking to suspend or revoke a professional license to prove the allegations of an accusation by clear and convincing evidence rather than proof by a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 991-992.) The burden of proof in this matter was on Complainant to establish the allegations in the accusation by clear and convincing evidence.

2. Clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt; it must be sufficiently strong to command the unhesitating assent of every reasonable mind. This requirement presents a heavy burden, far in excess of the preponderance of evidence standard that is sufficient for most civil litigation. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Imposing License Discipline

3. The suspension or revocation of a license to engage in a profession is not penal; its purpose is to protect the public from incompetence and lack of integrity in those

practicing the profession. The business of compounding prescriptions and selling drugs is intimately connected with and has a vital relationship to the health, safety, and welfare of the public. Public safety must be regarded as superior to private rights. (*Brodsky v. California State Board of Pharmacy* (1959) 173 Cal.App.2d 680, 688-689.)

4. Business and Professions Code section 4101.1 provides:

Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Applicable Statutes

5. Business and Professions Code section 490 provides in part:

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

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

(c) A conviction within the meaning of this section means a plea . . . of guilty. . . . Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed. . . .

6. Business and Professions Code section 4300 provides in part: "(a) Every license issued may be suspended or revoked."

7. Business and Professions Code section 4301 provides in 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.

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter . . .

Substantial Relationship

8. To justify the imposition of discipline, there must be some nexus between an act or omission and the professional's fitness or competence to practice. The Legislature has established such a nexus with respect to certain acts or omissions even where the acts or omissions do not actually impair a professional's ability to practice. It does so by expressly identifying the act or omission as an instance of "unprofessional conduct." (*Medical Bd. of California v. Superior Court (Liskey)* (2003) 111 Cal.App.4th 163, 174.)

A determination that a licensee's conviction justifies discipline cannot rest on the moral reprehensibility of the underlying conduct, but requires a reasoned determination that the conduct was in fact substantially related to the licensee's fitness to engage in the profession. Licensing authorities enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to "develop criteria to aid it . . . to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates." (*Donaldson v. Department of Real Estate of State of Cal.* (2005) 134 Cal.App.4th 948, 955-956.)

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

For the purpose of denial, suspension, or revocation of a personal or facility license . . . 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.

10. Pharmacists must scrupulously exercise good judgment, particularly with regard to dangerous substances and alcohol. The Legislature specifically provided in Business and Professions Code section 4301, subdivision (h), that the use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself or others, is grounds for license discipline. California Code of Regulations, title 16, section 1770, provides that any crime or act shall be considered substantially related to the qualifications of a licensee if to a substantial degree it evidences present or potential unfitness.

Under the express language of Business and Professions Code section 4301, subdivisions (h) and (l), and the clear intent of the regulation, respondent's misdemeanor DUI conviction constituted unprofessional conduct and is substantially related to the qualifications, functions, and duties of a pharmacist. This conclusion is based on factual findings and on legal conclusions set forth herein.

Cause Exists to Impose Discipline Against Respondent's License

11. First Cause for Discipline: Cause exists under Business and Professions Code sections 490 and 4301, subdivision (l), to impose discipline on respondent's license. The clear and convincing evidence established that respondent was convicted of the misdemeanor offense of driving under the influence of alcohol, from her actions on January 11, 2015, and that this crime is substantially related to the qualifications, functions, and duties of a pharmacist. This conclusion is based on the factual findings and legal conclusions herein.

12. Second Cause for Discipline: Cause exists under Business and Professions Code sections 490 and 4301, subdivision (h), to impose discipline on respondent's license. The clear and convincing evidence established that respondent used alcoholic beverages in a manner and to an extent that was dangerous or injurious to herself and to the public. This conclusion is based on the factual findings and legal conclusions herein.

Rehabilitation

13. California Code of Regulations, title 16, section 1769, sets forth criteria for rehabilitation. It provides in part:

(c) When considering the suspension or revocation of a facility or 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.

14. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Disciplinary Guidelines

15. California Code of Regulations, title 16, section 1760, provides that in reaching a decision in a disciplinary action under the Administrative Procedure Act, the board must consider its Recommended Guidelines for Disciplinary Orders and Conditions of Probation (guidelines). Deviation from the guidelines is appropriate when the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation, for example: the presence of mitigating factors, the age of the case, or evidentiary problems in the case.

16. Under the guidelines, the recommended discipline for violation of Business and Professions Code section 4301, subdivisions (h) and (l), unprofessional conduct, ranges from a minimum discipline of revocation, stayed, three years' probation, to a maximum disciplinary order of revocation.

17. The board's guidelines provide criteria to consider in determining the appropriate level of discipline, including: The nature and severity of the acts under consideration, the number and/or variety of current violations, the actual or potential harm to the public, the actual or potential harm to any consumer, respondent's prior disciplinary record, evidence of mitigation and rehabilitation, and the amount of time that has passed since the occurrence of the acts under consideration.

18. The guidelines permit respondent to present evidence demonstrating her rehabilitative or corrective efforts and competency, such as:

A) Recently dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice of pharmacy. Each statement should include the period of time and capacity in which the

person worked with the respondent and should be signed under the penalty of perjury and subject to verification.

B) Recently dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program. These should include a description of the program, a psychologist's diagnosis of respondent's condition and current state of recovery, and the psychologist's basis for determining rehabilitation.

C) Recently dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.

D) Recently dated laboratory analyses or drug screen reports, confirming abstention from drugs and alcohol.

E) Recently dated physical examination or assessment report by a licensed physician confirming the absence of any physical impairment that would prohibit respondent from practicing safely.

F) Recently dated letters from probation or parole officers regarding respondent's participation in and/or compliance with terms and conditions of probation or parole. The letter should include a description of the terms and conditions and the officer's basis for determining compliance.

The Application of Facts to Law

19. Respondent drank alcohol to excess on January 10, 2015, and the early morning of January 11, 2015. Her judgment became so impaired that she drove a car with a BAC of 0.20 percent. She was found sleeping in her car on an active roadway, and she had a collision with her vehicle resulting in two flat tires. Respondent was so intoxicated at the time of her arrest that she was incapable of cooperating with the police officer to perform field sobriety tests and started crying uncontrollably. Her use of alcohol on that date resulted in potential harm to the public. Even though respondent has made efforts toward establishing and maintaining her sobriety over the past six months or so, she has provided no evidence to corroborate her asserted sobriety date, no evidence from a physician regarding her alcohol use, and no evidence of any continuing therapy from a counselor or therapist regarding her current state of sobriety. Respondent currently takes no steps to ensure that she will not consume alcohol to excess in the future. She did provide evidence that she is currently receiving good reviews for her work as a pharmacist and has not had any work related incidents since her conviction. She provided multiple letters to demonstrate her good character, professionalism, and knowledge as a pharmacist. She has complied with the terms

of her probation, and she remains on criminal probation until 2018. However, she has only refrained from the consumption of alcohol for about six months, and she was convicted only about one and a half years ago and remains on criminal probation. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

The mitigating evidence that respondent produced and her evidence of rehabilitation were insufficient to support a conclusion that she presently possesses the sobriety required to practice pharmacy safely without probationary terms and conditions to ensure public protection. Public safety need not be placed at risk to enable respondent to establish that she has changed her ways. The laws are designed to protect the public before a licensee harms a patient rather than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771.). However, under these circumstances, public protection will be sufficiently served if respondent's license is placed on probation for four years with appropriate terms and conditions, including the requirement that she abstain from the use of alcohol and undergo random bodily fluid tests for the presence of alcohol. Such terms will ensure that respondent will continue to remain sober and will present no risk to the public. Given that respondent has only one incident of dangerous use of alcohol, no evidence of alcohol use while working as a pharmacist, and a good work record with recommendations from her current supervisor, there is no need to require supervision of her work as a pharmacist under these circumstances.

Costs of Prosecution

20. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law . . . upon request of the entity bringing the proceeding, the administrative law judge may 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.

21. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the regulation imposing costs for investigation and enforcement under Title 16, California Code of Regulations, section 317.5 (which is similar to Bus. & Prof. Code § 125.3) did not violate due process in a case involving the discipline of a chiropractor. But, it was incumbent on the State Board of Chiropractic Examiners to exercise its discretion to reduce or eliminate cost awards in a manner that ensured that section 317.5 did not "deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing."

The Supreme Court set forth five factors that the State Board of Chiropractic Examiners was required to consider in deciding whether to reduce or eliminate costs: (1) whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a "subjective" good faith belief in the merits of his position; (3) whether the chiropractor raised a "colorable challenge" to the proposed discipline; (4) whether the chiropractor had the financial ability to make payments; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

The *Zuckerman* criteria were applied in this matter, and it is concluded that issuing an order directing respondent to pay the board's costs of prosecution in this matter will not have a chilling effect on future respondents' exercise of their right to a hearing. Respondent shall be required to pay \$3,190 in prosecution costs.

ORDER

Pharmacist License No. RPH 68143, issued to Sheree Lyn Reed is revoked; however, the revocation is stayed and respondent is placed on probation for four 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 pharmacist 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 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 her probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of this decision 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 this decision, and 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.

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 entity licensed by the board of the terms and conditions of this decision in advance of the respondent commencing work at each 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 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 this decision 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 acknowledgments 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, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. 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 \$3,190. Respondent shall make said payment in installments as set forth by the board.

There shall be no deviation from the installment payment schedule set forth by the board 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 prosecution.

9. 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.

10. Status of License

Respondent shall, at all times while on probation, maintain an active, current 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 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.

11. 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 tender his or her 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 pocket and wall 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 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.

12. 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, 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.

13. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month. 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 practicing as a pharmacist for a minimum of 80 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. 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.

14. Violation of Probation

If 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.

15. 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 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

During suspension respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

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.

16. 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.

17. Completion of Probation

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

DATED: January 18, 2016

DocuSigned by:

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Accusation Against:

Case No. 5631

11 **SHEREE LYN REED**
12 **3972 Ainsworth Ave.**
13 **San Diego, CA 92111**

A C C U S A T I O N

14 **Pharmacist License No. RPH 68143**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about October 2, 2012, the Board of Pharmacy issued Pharmacist License
21 Number RPH 68143 to Sheree Lyn Reed (Respondent). The Pharmacist License was in full force
22 and effect at all times relevant to the charges brought herein and will expire on January 31, 2018,
23 unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.

28 4. Section **4011** of the Code provides that the Board shall administer and enforce both

1 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
2 Act [Health & Safety Code, § 11000 et seq.].

3 5. Section **4300** of the Code provides that every license issued by the Board may be
4 suspended or revoked.

5 6. Section **4300.1** of the Code states:

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

11 **STATUTORY AND REGULATORY PROVISIONS**

12 7. Section **4301** of the Code provides, in pertinent part, that the Board shall take action
13 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
14 not be limited to, any of the following:

15 . . .

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

21 . . .

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

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

11 . . .

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

13 For the purpose of denial, suspension, or revocation of a personal or facility license
14 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
15 crime or act shall be considered substantially related to the qualifications, functions or duties of a
16 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
17 licensee or registrant to perform the functions authorized by his license or registration in a manner
18 consistent with the public health, safety, or welfare.

19 **COST RECOVERY**

20 9. Section **125.3** of the Code provides, in pertinent part, that a Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Criminal Conviction)

26 10. Respondent is subject to disciplinary action under Code section 4301, subsection
27 (l), in that she has been convicted of a crime substantially related to the qualifications, functions,
28 and duties of a licensee. The circumstances are as follows:

