

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

In the Matter of the Accusation Against:

Case No. 5698

STEPHANIE NICOLE PILCHER,

OAH No. 2016060807

Pharmacy Technician Registration Number
TCH 113837

Respondent.

DECISION AND ORDER

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

This decision shall become effective at 5:00 p.m. on January 26, 2017.

It is so ORDERED on December 27, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Gene K. Cheever, Office of Administrative Hearings, State of California, heard this matter on October 26, 2016, in Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Gilbert D. Somera, Attorney at Law, Somera Law Group, represented Stephanie Nicole Pilcher (respondent), who was present at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on October 26, 2016.

FACTUAL FINDINGS

1. On September 15, 2011, the Board issued Pharmacy Technician Registration Number TCH 113837 (registration) to respondent. Respondent's registration was in full force and effect at all times relevant to the allegations set forth in the Accusation, and will expire on November 30, 2016, unless renewed or revoked. Complainant seeks to discipline respondent's registration based upon her driving under the influence (DUI) convictions described below.

Criminal Convictions

2. On September 11, 2015, in the San Joaquin County Superior Court, Case No. ST065173A, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood alcohol concentration (BAC) of 0.08 percent or higher, with an enhancement of Vehicle Code section 23578 (having a blood alcohol content (BAC) of 0.15 percent or higher). Respondent was sentenced to seven days in jail and placed on three years of conditional probation. She was also ordered to complete a DUI program and pay fines and fees.

3. The incident underlying this conviction occurred on March 29, 2015, when respondent backed into another vehicle at a liquor store parking lot. A Stockton Police Officer arrived at the scene, and smelled alcohol on her breath. Respondent failed to perform field sobriety tests as directed. Her BAC was measured at 0.26 percent.

4. On September 11, 2015, in the San Joaquin County Superior Court, Case No. ST065305A, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving a vehicle with a BAC of 0.08 percent or higher, a misdemeanor. Respondent was sentenced to ten days in jail and placed on three years of conditional probation. She was also ordered to complete a DUI program and pay fines and fees.

5. The incident underlying this conviction occurred on April 18, 2015, when two California Highway Patrol (CHP) officers observed respondent driving erratically on a street almost hitting a parked vehicle. The CHP officers stopped respondent and upon speaking with her smelled alcohol on her breath. Respondent failed to perform field sobriety tests as directed. Her BAC was measured at 0.16 percent.

Responsibilities of a Pharmacy Technician

6. Steven Kyle testified on behalf of complainant. Mr. Kyle has worked as an inspector for the Board investigating violations of pharmacy laws for two years. He has been a registered pharmacist since 1996. He worked as a pharmacist for 18 years before joining the Board. Based on his experience, Mr. Kyle is familiar with the responsibilities of a pharmacy technician. These responsibilities include assisting a pharmacist with his or her duties, filling prescriptions under the supervision of a pharmacist, and handling controlled substances. According to Mr. Kyle, it is important a technician's judgment is not impaired while at work and that he or she can be trusted alone with controlled substances. If the technician's judgment is impaired, it could result in serious harm to patients. A technician's abuse of alcohol outside of work is a concern as it can impact job performance.

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Evidence of Rehabilitation, Mitigation, and Aggravation

7. Respondent is 28 years old. She admitted driving under the influence of alcohol. She was sincerely apologetic and remorseful for her conduct. She has learned much from this experience. Respondent explained that her DUI arrests occurred during a bad three-month period in her life when she consumed a lot of alcohol. She went through a break-up with an individual she had been dating for 10 years. Respondent has been sober since April 2015, after her second DUI arrest. Since that time, respondent has taken a number of actions to turn her life around beyond abstinence from alcohol.

8. Respondent is complying with the court's sentencing order. She enrolled in the Safety Council Multiple Offender course. This requires her to attend a two-hour class every Tuesday evening for 18 months. She expects to finish the course in June 2017. Respondent completed her community service in December 2015. She worked from 7:00 a.m. to 4:00 p.m. at the Micke Grove Museum for seven days on Saturdays or Sundays. Respondent wore a bracelet for two months that could detect if she consumed alcohol. She had no violations. Respondent's vehicle is equipped with an alcohol-ignition interlock device that prevents her from driving if she has consumed any alcohol. She is required to use it until September 2017. She has not had any violations. Respondent is paying the fines on a payment plan and expects to finish in October 2017.

9. Respondent has also engaged in voluntary actions to help turn her life around. In November 2015, she completed a twelve-week alcohol and drug program. Respondent started seeing the psychiatrist in April 2015, and last attended four months ago. Because of a \$70 co-pay, it was too expensive to continue. Respondent found the counseling very helpful. She learned how to address her problems without alcohol. In April 2016, respondent started attending church again. She lives with her parents who are supportive.

10. Respondent started working at a pharmacy at age 15. She received her registration in 2011. She started working as a technician at Walgreens in July 2014. She enjoys her job. She stated she has never gone to work under the influence of alcohol. Respondent told her direct supervisor, Adam Kaye, and other co-workers about her DUI convictions. Mr. Kaye has been very supportive of her.

11. Mr. Kaye is a Walgreens pharmacist where respondent works. He submitted a letter of support dated May 27, 2016. He described respondent as a pleasure to work with and an outstanding employee. He noted that many Walgreens customers express their appreciation of respondent's compassion and kindness. Respondent made him aware of her DUI convictions in May 2016. He feels it is unfortunate the two events occurred, but believes she has matured in her judgment as a result of them.

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12. Respondent submitted the following documents in support of her rehabilitation.

- a. A Safety Council Multiple Offender Appointment Schedule documenting her attendance to date at this 18-month course. This schedule confirmed she enrolled in the course in February 2016, she has attended as scheduled with one exception, and she is expected to complete the course in June 2017.
- b. The work schedule documenting her performance of community service at Micke Grove Museum on weekends in November and December 2015.
- c. Her bracelet equipment check-in verification.
- d. An example of her ignition-interlock verification form.
- e. An example of her Kaiser substance abuse program visit verification.
- f. An example of her Kaiser psychiatrist visit verification.

Discussion

13. In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth the following criteria for evaluating the rehabilitation of a licensee who has been convicted of a crime. These criteria include:

- (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 any or 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. In September 2015, respondent was convicted of two separate DUI crimes that occurred in March and April of 2015. Her probation is not scheduled to end until September 2018. The seriousness and recency of these convictions raise concerns about whether respondent is able to work as a pharmacy technician without risk to the public health, safety, and welfare.

15. At hearing, however, respondent submitted strong evidence of rehabilitation. She testified in a sincere and candid fashion. She took responsibility for her DUI convictions, and is now sober. She expressed remorse for her conduct, and has taken steps to ensure that she does not exercise such poor judgment again. To date, respondent has been compliant with probation, however, minimal weight is given to such efforts since there is an expectation of good behavior while under supervision. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Respondent has been on probation for a short period of time and it is scheduled to continue until September 2018. However, she voluntarily took steps to help her turn her life around. She attended a 12-week substance abuse program and saw a psychiatrist to help her learn coping mechanisms. She informed her boss and co-workers about her DUI convictions. She attends church. She lives with her parents who are supportive. When all the evidence is considered, the public health, safety, and welfare would be adequately protected if respondent is placed on probation for five years under the terms and conditions set forth below.

Costs

16. Complainant has requested that respondent be ordered to pay the Board's costs for investigation and enforcement in the amount of \$2,912.50. The costs are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing those tasks, and the amounts charged. Respondent did not object to the requested costs. Complainant established that the costs are reasonable in light of the allegations and issues in this matter.

17. Respondent's testimony established that she is not financially able to pay the full costs at this time. Complainant's request regarding costs is more fully addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4300, subdivision (a),¹ provides that "Every license issued may be suspended or revoked."² Section 4301.1 permits the Board to discipline a license after its expiration, cancellation, or forfeiture. Section 4301 provides that the Board "shall take action against any holder of a license who is guilty of unprofessional conduct..." Subdivision (l) of that section defines "unprofessional conduct" to include the "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter." California Code of Regulations, title 16, section 1770, provides

¹ All further statutory references are to the Business and Professions Code unless otherwise indicated.

² Section 4032 defines "license" to include "any license, permit, registration, certificate, or exemption" issued by the Board.

that, “a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

2. Respondent’s convictions for DUI evidence her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, and welfare. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) Consequently, they are substantially related to the qualifications, functions, and duties of a pharmacy technician and constitute cause to discipline her registration under Section 4301, subdivision (l).

3. Section 4301, subdivision (h), defines “unprofessional conduct” to include “the use of ... alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself ... or to any other person or to the public....” As set forth in Factual Findings 2 through 5, respondent’s DUI convictions show that she used alcohol to an extent and in a manner that was dangerous to herself and the public. Consequently, respondent’s conduct leading to her DUI convictions constitute cause to discipline her registration under Section 4301, subdivision (h).

4. Section 4301, subdivision (k), defines “unprofessional conduct” to include “the conviction of more than one misdemeanor ... involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage....” As set forth in Factual Findings 2 through 5, respondent’s DUI convictions involved the use, consumption, or self-administration of alcohol. Consequently, respondent’s DUI convictions constitute cause to discipline her registration under Section 4301, subdivision (k).

5. As set forth in Factual Findings 13 through 15, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow her to retain her registration on a probationary basis subject to the terms and conditions set forth below.

6. Pursuant to Section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee’s subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Factual Finding 16, complainant seeks \$2,912.50 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. Given respondent's financial inability to pay all these costs at this time, respondent should be permitted to pay them over the term of her probation according to a reasonable payment plan approved by the Board or its designee.

ORDER

Pharmacy technician registration number TCH 113837, issued to respondent STEPHANIE NICOLE PILCHER is REVOKED. The revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which 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.

2. 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:

(a) 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

(b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

(c) a conviction of any crime

(d) discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

3. 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.

4. Interview with the Board

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

5. 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.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case 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 her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in this case in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that she has read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

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

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

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,912.50. Respondent shall pay this amount over the term of her probation in accordance with a reasonable payment schedule established by the Board or its designee. There shall be no deviation from this schedule absent prior written approval by the Board or its designee.

Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

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

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

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

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known.

Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

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

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 60 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 working as a pharmacy technician for a minimum of 60 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 60 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 60 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Violation of Probation

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

16. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which 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.

17. Work Site Monitor

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, ~~he or she shall notify the board immediately, either orally or in writing as directed.~~ Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

18. Notification of Departure

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

19. 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 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.

DATED: November 22, 2016

DocuSigned by:

Gene Cheever

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GENE K. CHEEVER
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5698

12 **STEPHANIE NICOLE PILCHER**
13 **2014 Bradford St.**
Stockton, CA 95205

A C C U S A T I O N

14 **Pharmacy Technician Registration Number**
15 **No. 113837**

16 Respondent.

17 Virginia Herold (“Complainant”) alleges:

18 **PARTIES**

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

21 2. On or about September 15, 2011, the Board issued Pharmacy Technician Registration
22 Number 113837 (“registration”) to Stephanie Nicole Pilcher (“Respondent”). The registration
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2016, unless renewed.

25 **JURISDICTION**

26 3. Business and Professions Code (“Code”) section 4300 provides, in pertinent part, that
27 every license issued by the Board is subject to discipline, including suspension or revocation.

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4. Code section 4301.1 states:

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

STATUTORY PROVISIONS

5. Code section 4301 states, in pertinent part:

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

...

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

...

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

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

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1 COST RECOVERY

2 6. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (Conviction of Crimes)

8 7. Respondent is subject to discipline pursuant to Code section 4301(I), on the grounds
9 of unprofessional conduct, in that on or about September 11, 2015, Respondent was convicted of
10 crimes which are substantially related to the qualifications, functions, or duties of a pharmacy
11 technician, as follows:

12 a. In the case of *People v. Stephanie Nicole Pilcher* (Super. Ct. San Joaquin County,
13 Case No. ST065173A), Respondent was convicted by the Court on her plea of nolo contendere of
14 violating Vehicle Code section 23152(b) (driving a vehicle with a blood alcohol level of .08% or
15 higher), a misdemeanor, with an enhancement of Vehicle Code section 23578 (having a blood
16 alcohol level of .15% or higher). The circumstances of the crime were that on or about March 29,
17 2015, Respondent drove a vehicle while having a blood alcohol level of 0.26% and collided with
18 a parked vehicle.

19 b. In the case of *People v. Stephanie Nicole Pilcher* (Super. Ct. San Joaquin County,
20 Case No. ST065305A), Respondent was convicted by the Court on her plea of nolo contendere of
21 violating Vehicle Code section 23152(b) (driving a vehicle with a blood alcohol level of .08% or
22 higher), a misdemeanor. The circumstances of the crime were that on or about April 18, 2015,
23 Respondent drove a vehicle while having a blood alcohol level of 0.16% and nearly collided with
24 another vehicle while making a right hand turn.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Dangerous Use of Alcohol)

3 8. Respondent is subject to discipline pursuant to Code section 4301(h), on the grounds
4 of unprofessional conduct, in that Respondent consumed alcohol to the extent or in a manner as to
5 be dangerous or injurious to oneself and the public, in that on or about March 29 and April 18,
6 2015, Respondent drove a vehicle while under the influence of alcohol, as more particularly set
7 forth above in paragraph 7.

8 THIRD CAUSE FOR DISCIPLINE

9 (Conviction Involving the Use of Alcohol)

10 9. Respondent is subject to discipline pursuant to Code section 4301(k), on the grounds
11 of unprofessional conduct, in that on or about September 11, 2015, Respondent was convicted by
12 the Court of more than one misdemeanor involving the use, consumption, and self administration
13 of alcohol, as more particularly set forth above in paragraph 7.

14 PRAYER

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

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 113837,
- 18 issued to Stephanie Nicole Pilcher;
- 19 2. Ordering Stephanie Nicole Pilcher to pay the Board of Pharmacy the reasonable costs
- 20 of the investigation and enforcement of this case, pursuant to Business and Professions Code
- 21 section 125.3; and,
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: _____

5/3/16

Virginia Herold

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

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