

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

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

**JAIME DANIELE DI FIORE, Respondent**

**Pharmacy Technician Registration No. TCH 101440**

**Agency Case No. 6507**

**OAH No. 2019100880**

**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 May 6, 2020.

It is so ORDERED on April 6, 2020.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe  
Board President

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Respondent.**

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**PROPOSED DECISION**

Administrative Law Judge Adrienne Miller, State of California, Office of Administrative Hearings, heard this matter on January 6, 2020, in Oakland, California.

Joshua A. Room, Supervising Deputy Attorney General, represented complainant Anne Sodergren, Interim Executive Office of the Board of Pharmacy (board), Department of Consumer Affairs.

Mark Cohen, Attorney at Law, represented respondent Jaime Daniele Di Fiore who was present.

The record was left open until January 16, 2020, for complainant to provide a Trial Brief and for respondent to file a Reply by January 21, 2020. On January 16, 2020, complainant's Trial Brief was received and marked as Exhibit 12. On January 21, 2020, respondent's Reply was received and marked as Exhibit O. The record closed and the matter was submitted on January 21, 2020.

## **FACTUAL FINDINGS**

1. Complainant, while acting in her official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed an accusation against respondent. Respondent timely requested a hearing and the instant hearing ensued.

2. On September 1, 2010, the board issued to Jaime Daniele Di Fiore (respondent) Pharmacy Technician Registration Number 101440. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2020, unless renewed.

### **Criminal Convictions**

2. On February 28, 2018, respondent was convicted in the Superior Court of California, County of Alameda, case no. 17-CR-039998, pursuant to his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent or higher (DUI)), a misdemeanor. Imposition of sentence was suspended and respondent was placed on three years' court probation on terms and conditions which included serving 30 days in jail, with credit for time served of two days, one-half time eligible through the Weekend Work Program, enrolling in and completing an 18-month Drinking Driver Program, and paying fines and fees. The

court further restored the remaining terms and conditions imposed in respondent's prior Alameda County Court Case, No. 464658.

The facts and circumstances of the offense are that on July 4, 2017, a California Highway Patrol Officer (CHP) initiated a traffic stop after observing respondent's vehicle travelling at a high rate of speed, which he visually estimated to be approximately 85 miles per hour (MPH). The CHP officer utilized a LIDAR unit and received a digital reading of 86 MPH. While speaking to the respondent, the officer detected the odor of an alcoholic beverage emitting from within the vehicle. Respondent admitted to the officer that he had consumed two beers earlier. Respondent failed to perform a series of Field Sobriety Tests (FST) as explained and demonstrated. Respondent submitted to a Preliminary Alcohol Screening (PAS), which resulted in breath alcohol concentrations of 0.087 percent at 6:14 P.M. and 0.085 percent at 6:16 P.M. A check of respondent's driver license showed that he was on active DUI probation and had a requirement for an Ignition Interlock Device (IID) on any vehicle he drove. A check of respondent's vehicle showed that he did not have an IID. A small child approximately one-year of age was in a child seat in the rear of the vehicle. The vehicle and child were released to respondent's wife, who was also a passenger. Respondent was arrested and transported and booked into the Santa Rita Jail where he submitted to a chemical blood test at 6:50 P.M. The chemical blood tested resulted in an alcohol concentration of 0.11 percent.

3. On September 15, 2015, respondent was convicted in the Superior Court of California, County of Alameda, case no. 464658, pursuant to his plea of no contest, of violating Vehicle Code sections 23152, subdivision (a) (DUI Alcohol), a misdemeanor and 23152, subdivision (b) (driving with a blood alcohol level of .08 percent or higher), a misdemeanor. Both counts were further enhanced by prior DUI convictions on June

29, 2006. Both counts were enhanced because of an excessive blood alcohol of 0.15 percent or more. Respondent was placed on probation for a period of five years on terms and condition which included serving 120 days in jail, (referral to Electronic Surveillance Program/Electronic Monitoring), one-half time eligible, enrolling in and completing an 18-month Drinking Driver Program, installing an Ignition Interlock Device, paying restitution, fines and fees, driver's license revocation for three years, and designation as a Habitual Traffic Offender.

The facts and circumstances of the offense are that on July 16, 2015, a CHP officer was dispatched to investigate a solo vehicle traffic collision. The involved vehicle had sustained damage to its front, rear, and right sides. The officer contacted respondent who stated that he fell asleep while driving at approximately 45 MPH and when he woke up he saw a "wide, 10-foot plastic thing" in the roadway ahead of him, which he swerved his vehicle to avoid, and hit the roadway shoulder. A witness statement contradicted respondent's statement. The witness stated that he saw respondent's vehicle travelling at a high rate of speed and saw the vehicle spin out of control when making an abrupt lane change. While speaking to respondent, the officer noted respondent's red, watery eyes, and the odor of an alcoholic beverage emitting from his breath. Respondent admitted to the officer that he had earlier consumed three shots of whiskey and three beers at a restaurant in San Jose. Respondent failed to perform a series of FST's as explained and demonstrated. Respondent submitted to a PAS, which resulted in breath alcohol content (BAC) of 0.16 percent and 0.152 percent. Respondent was placed under arrest. Respondent agreed to take a blood test, which showed a BAC of 0.17 percent.

## **Disciplinary Considerations**

4. On June 29, 2006, respondent was convicted in the Superior Court of California, County of Alameda, case no. 215016-9, pursuant to his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (DUI with a blood alcohol level of .08 percent or higher), a misdemeanor, with enhancement per Vehicle Code section 23582 (driving at excessive speed). Imposition of sentence was suspended and respondent was placed on three years' court probation on terms and condition which included serving 60 days in jail, with credit for time served of one day, eligible to serve time through the Alameda County Sheriff Weekend Work Program, enrolling in and completing a Drinking Driver Program (DDP), and paying restitution, fines and fees. The court further ordered respondent's driver's license to be suspended for one year pursuant to Vehicle Code section 13202.5.

The facts and circumstances of the offense are that on September 4, 2005, respondent was stopped for driving at an excessive speed. No other facts were provided.

5. On June 29, 2006, respondent was convicted in the Superior Court of California, County of Alameda, case no. 217508-3, pursuant to his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (DUI with a blood alcohol level of .08 percent or higher), a misdemeanor, and Vehicle Code section 2800.1, subdivision (a) (evading a peace officer), a misdemeanor. Imposition of sentence was suspended and respondent was placed on three years' probation on terms and conditions which included serving 120 days in jail, enrolling in and completing a DDP, and paying restitution, fines and fees.

No evidence of the facts and circumstances of the offense was provided except that the offense occurred on February 19, 2006.

6. On February 25, 2010, respondent wrote to the board prior to applying for his pharmacy technician registration and stated in pertinent part:

On the dates of September 4, 2005 and February 19, 2006 I was pulled over for driving under the influence of Alcohol, and on February 19, 2006 I also did not comply with authorities and because of that action I was charged with evading a peace officer. The consequences for my wrong doings were 3 years of court probation, thousands of dollars in fines, and having a suspended driver's license for 18 months. During that time in my life I was only 19 years old, was very naïve, confused and lost in my own world. Now 5 years has passed and I look back at all my wrong doings and realize how wrong and reckless I was in my younger years. Now I am 24 years old and trying to build a career for myself in our Health Care system. I assure you that I have completely turned my life around and learned from my past mistakes and with the help of God will never put myself in that type of situation again.

I have grown into my own skin, have become more responsible and have come to understand what life is really all about. I have now become a brand new father to a [2-month-old] baby boy, head of household and need to support my family and provide the best care I can for them.

I believe becoming a Pharmacy Technician will be a turning point in my life and a most intelligent choice I have made in my life.

7. On April 26, 2018, respondent wrote to the board prior to the renewal of his pharmacy technician registration and stated in pertinent part:

I am facing the consequences of my actions. I deeply regret my actions but I am thankful enough that this has made me realize that life is not a game, and I am very lucky that things could have been for worst. What I have learned from this experience is that I will never put my wife and children [through] this ordeal ever again that's why I am taking measures to stay in my sobriety for years to come. I have not had a drop of alcohol since my DUI and will continue to not drink alcohol. I have learned my lesson and have a new and positive outlook on life.

### **Previous Citation**

8. On December 7, 2015, the board issued respondent a citation for three violations of the Business and Professions Code: 1) Business and Professions Code section 4301, subdivision (h), (Unprofessional Conduct—The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent to in a manner as to be dangerous or injurious to oneself), 2) Business and Professions Code section 4301, subdivision (k) (Unprofessional Conduct—Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage), and



3) Business and Professions Code section 4301, subdivision (l), (Unprofessional Conduct—Conviction of a crime substantially related to the practice of pharmacy). A fine in the amount of \$900 was assessed. Respondent paid the fine on January 6, 2016. This citation was premised on the 2015 convictions described in Factual Finding 3.

## **Testimony of Dr. Hilda Nip**

9. Dr. Hilda Nip received her doctorate of pharmacy from the University of California, San Francisco in 1993. She has worked as a pharmacist in both retail environments and in hospitals. She has directly supervised pharmacy technicians in her career. She is an inspector for the board and is familiar with the laws and regulations that govern the work of pharmacists and pharmacy technicians, as well as the everyday functions of pharmacists and pharmacy technicians in practice. Dr. Nip did not conduct the investigation of respondent's criminal convictions but reviewed respondent's criminal record and noted that because of respondent's four DUI convictions from 2006 to 2018 she is very concerned about his tendency to violate laws of society and put the public's safety at issue. Dr. Nip testified that a pharmacist must directly supervise the actions of a pharmacy technician. Although a technician must be supervised, in reality, a pharmacist is only aware of what the pharmacy technician is doing generally. It is common for a pharmacy technician to perform tasks of which the pharmacist lacks direct knowledge. Additionally, pharmacy technicians have access to dangerous drugs and controlled drugs. Dr. Nip testified that pharmacy technicians must be trustworthy and exercise good judgment because of their direct access to dangerous drugs. Dr. Nip testified that a pharmacy technician with a history of alcohol abuse and four convictions for DUI's poses a serious risk of danger without assurances that he has been rehabilitated. Dr. Nip further testified that pharmacists rely heavily on pharmacy technicians, put a great deal of trust in them, and therefore it is crucial for

pharmacy technicians to be trustworthy and exercise excellent judgment. Dr. Nip stated that the four DUI convictions at issue here call respondent's judgment into serious doubt, and also demonstrates a lack of ability to conform his conduct to the law. In Dr. Nip's expert opinion, she concluded that respondent's conduct at issue was clearly unprofessional. Furthermore, his conduct in reference to his profession is not limited to his conduct in the work place.

## **Respondent's Evidence**

10. Respondent is 33 years old, married and has three children under the age of 10. He lives with and supports his wife, three children and his mother, who is suffering from cancer. Respondent's wife works as a financial adviser. Respondent is currently employed at Dignity Health as a pharmacy technician, as the lead technician for chemotherapy. Respondent has held for this position for the last year.

11. Respondent testified that he started drinking alcohol as a teenager and has had an alcohol problem since he was 20 years old. Respondent recognizes he is an alcoholic and cannot drink alcohol anymore. He stopped drinking after his fourth DUI arrest on July 4, 2017, and admits that he violated his court probation, imposed in 2015. Respondent testified credibly that it is a struggle every day for him to remain sober, but he is confident that he will be successful in his sobriety with the support of his family. In April 2019, respondent and his family moved from the Bay Area to San Luis Obispo to remove himself from his previous life and friends to start a new life, a quieter life, away from his previous temptations. Respondent testified that he reached rock bottom after his fourth DUI and with the help of marriage counseling and his love of his family he is working every day to stay sober and keep his family together.

12. Respondent independently attended Alcoholics Anonymous (AA) from November 2018 to April 2019 after his fourth DUI and has completed his previous drinking driving programs ordered by the court for his three previous DUI's. Respondent is currently attending the 18-month Drinking Driver Program ordered by the court for his fourth DUI at the County of San Luis Obispo Behavioral Health Services, Drug and Alcohol Services Department. Respondent attends four meetings per month, two group setting meetings and two meetings with a counselor. Respondent has not attended any inpatient or outpatient treatment programs for his alcohol abuse and stopped his AA attendance in March 2019. He does not have an AA sponsor and has never had one, and does not know the AA's 12-step program. Respondent is relying solely on his wife and family and his own mental strength to help him maintain his sobriety and avoid relapse. Respondent is currently paying off his court fines from his fourth DUI and his current court probation will not terminate until February 2021.

13. Respondent provided seven character letters from friends, work supervisors and colleagues.

14. In a letter dated October 15, 2019, Kenny Bui, respondent's supervising pharmacist at Marian Regional Medical Center in Santa Maria, California, writes that he has practiced pharmacy fulltime with respondent for the past six months, and "that in that short time I can confidently say that [respondent] performs with the highest level of proficiency, passion for patient care, and attention to detail. He has proven to be one of the most reliable employees I have the pleasure to work with, and he continues to go above and beyond in all of the duties assigned to him as a certified pharmacy technician." Bui also states in pertinent part:

I understand that [respondent] has a past history of DUIs, and I recognize the seriousness of these infractions, especially in the eyes of the Board. In all honesty, when [respondent] told me about his past legal troubles, I was surprised. Because since knowing him, I feel that [respondent's] current conduct is neither one of someone who is impaired nor a reflection of one of substance abuse. He has never displayed behavior that has put patients or co-workers at a safety risk nor led me to question his ability to perform his duties at work or elsewhere. It is my hope that the Board re-examines his case and comes to the same conclusion.

15. In a letter dated February 1, 2019, Anthony Truong, a pharmacist and colleague of respondent for four years at O'Connor Hospital in San Jose, California, writes:

Since meeting [respondent], I have always known him as the great father and friend that he is. I have always seen him put his children, his family, and his friends first before anything and I can honestly say that he would do anything and everything for those people. When it comes to work as a pharmacy technician, he brings that same energy and attitude to his patients and I can always count on him to deliver patient care when it is necessary.

I am aware of [respondent's] DUI issues he has [run] into over the past few years. I was there during the times when

his license was suspended for a while and we have [spoken] about some of his court hearings. And throughout some of the mistakes he has made from poor decisions which occurred years ago outside of work, I can tell you with great confidence that I never have ran into any outside related issues when it comes to work. I have seen his growth and regrets from these mistakes since when they have occurred and I will still 100% rely on him to come to work and provide the patient care that he has devoted himself to do until this day.

16. In a letter dated October 11, 2019, Lyle Takahashi, respondent's supervising pharmacist and colleague at Mission Hope Infusion Center in Santa Maria, California for the previous six months, writes:

I have found [respondent] to be very dependable, hardworking, personable, and versatile in his work duties. He has shown professionalism in his interactions with physicians, nurses, pharmacists, technicians, and other personnel in our infusion center. He is highly skilled in performing his duties as a sterile compounding technician preparing cancer chemotherapy products.

I am aware of his past legal problems and have no reason to believe that it affects his performance at work.

17. In a letter dated February 5, 2019, Daniel Sobeck, respondent's friend and colleague, an overnight pharmacist at O'Connor Hospital in San Jose, California, writes:

Professionally I have known [respondent] for the past year. Because [respondent] works as an overnight technician, I have spent a minimum of 40 hours a week, every other week working with [respondent] on a one on one basis. I can attest to [respondent's] work ethic, motivations, reliability and overall demeanor. He is a skilled and knowledgeable pharmacy technician and works well with pharmacists, pharmacy technicians, nurses and other medical staff throughout our hospital. I have never known [respondent] to refuse an assignment. [Respondent] consistently sets the standard at work for other technicians and throughout the night completes tasks which allow our day team to better perform their duties. While working alongside [respondent], I have found myself relying on his ability and technical prowess to better perform my duties of my job in addition to meeting the needs of our patients and medical staff throughout the night.

18. In a letter dated October 14, 2019, Dean Pattana, a clinical pharmacist working in the healthcare industry for seven years, writes that respondent is "an asset to our team and has acted only positively and professionally towards patients."

19. In a letter dated February 7, 2019, Lyle Mroz, a pharmacist at O'Connor Hospital in San Jose, California writes:

From the time when I first started my position as a new-grad pharmacist to the present day, [respondent] has always gone [out] of his way to show and teach me things

to improve my understanding of the workflow in the pharmacy as a whole. As a pharmacy technician, [respondent] is nothing short of an expert in his role and he epitomizes professionalism at all times. [Respondent] is highly efficient and quick at compounding sterile and non-sterile preparations while also maintaining 100% accuracy. [Respondent] always delivers patient medications in a timely fashion and he is very good at answering the phone (especially during busy times). As [respondent's] partner on the night shift, I have witnessed him perform countless selfless acts and he is known to demonstrate exceptional teamwork capabilities. [Respondent] is an irreplaceable asset to the pharmacy team at O'Connor Hospital.

20. In a letter dated February 6, 2019, Maureen Mayo, a pharmacist and respondent's co-worker for the last year writes that she has "found [respondent] to be prompt, hardworking and diligent in his duties working as the night shift pharmacy technician at O'Connor. He [has] shown grace under pressure during very busy periods, and I trust him. He is easy to work with and often goes above and beyond and is quick to help his colleagues and the department."

21. Respondent provided an undated Job Description and Performance Review from O'Connor Hospital with the evaluator's comments as follows:

[Respondent] is a good asset to the pharmacy team. He is quick to learn new things and has an upbeat attitude. Some of the comments from his co-workers are he has a lot of energy and is a fast worker. Being so fast to complete his

work, he has helped others complete their work and that's good teamwork. He does various shifts; but needs to learn/master tedious tasks too, like billing and Wet Cadet. He always tries to help out [everywhere], even if it's not part of his shift responsibilities. Some areas for improvement are improving at how to trouble shoot Pyxis and other technology issues. He could focus more on details, accuracy and thoroughness of the job at hand, especially in the IV room where attention to detail is of utmost importance. In the past, some of his conversations seemed inappropriate for a professional workplace (Las Vegas stories, foul language, etc.). He [occasionally] takes long breaks and needs to be reminded to deliver his rounds on time (though recently improved). [Respondent] has had 4 sick calls in the last year and 1 verbal warning.

22. Respondent provided an Initial Review from Dignity Health for the review period April 23, 2019 to July 22, 2019. Katherine Guthrie, manager for Dignity Health writes that respondent "has a wonderful attitude. His colleagues enjoy working with him. We are happy to have him as part of our team."

## **Costs**

23. Complainant submitted a certification of prosecution costs and declaration of Joshua A. Room pursuant to Business and Professions Code section 125.3. The certification is for work performed by the Office of the Attorney General and shows costs of prosecution in the amount of \$4,375, with a breakdown of the costs on an hourly basis showing each task performed and the hourly rate. The



evidence shows that those costs were incurred. There was no challenge to the reasonableness of these costs. The certification complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b) (3).

### **Respondent's Ability to Pay Costs**

24. Respondent has financial responsibilities and his present income is barely sufficient to support his financial obligations. It would be a financial hardship for respondent to pay the prosecution costs therefore the costs are reduced by 50 percent to \$2,187.50.

## **LEGAL CONCLUSIONS**

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

1. Pharmacy technicians are issued a license<sup>1</sup> based on minimal education, training requirements, or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

2. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies; the preponderance of the evidence standard of proof applies in proceedings to revoke nonprofessional or occupational licenses. The sharp distinction between professional licenses and nonprofessional licenses supports

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<sup>1</sup> The term "license" includes "certificate, registration, or any other means to engage in a business or profession" regulated by the Business and Professions Code. (Bus. & Prof. Code § 477, subd., (b)).

the distinction in the standards of proof. Because a professional license represents the fulfillment of extensive educational, training and testing requirements, a licensee has an extremely strong interest in retaining the license that he or she has expended so much effort to obtain. The same cannot be said for a licensee's interest in retaining a nonprofessional license even though an applicant for an occupational license (as opposed to a professional license) might be required to complete certain coursework and pass an examination. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453-454.)

3. The complainant has the burden of proving the charging allegations by a preponderance of the evidence. The preponderance of the evidence standard applies in this proceeding because a pharmacy technician registration is a nonprofessional/occupational license.

## **Applicable Statutes and Regulations**

4. Business and Professions code sections 409 and 4301 provide 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 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 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 of 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 . . .

5. California Code of Regulations, title 16, section 1770, addresses the issue of substantial relationship. It states in part 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.

### **Substantially Related Criminal Convictions**

6. Respondent's four criminal convictions for DUI in 2015 and 2018 are substantially related to the qualifications, functions, and duties of a pharmacy technician registrant within the meaning of California Code of Regulations, title 16, section 1770. The crime of driving under the influence of alcohol, committed by respondent on four occasions, shows to a substantial degree, his present or potential

unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. In this case, respondent intentionally consume alcohol and drove a vehicle placing the public and himself at risk. (Factual Findings 2 and 3).

7. Licensees in the health care industry are required to abide numerous laws and regulations established to protect the health and safety of the public. This includes abiding by laws that govern the licensee's activities that may not be directly related to his professional license, but could impact the public's health and safety outside the work environment. Respondent has repeatedly demonstrated a terrible lapse of judgment by driving while under the influence of alcohol while working as a pharmacy technician from 2010 to 2018. A pharmacy technician's work involves intimate access to controlled substances and dangerous drugs. The act of drinking alcohol and driving demonstrated a dangerous, conscious and selfish disregard for the law and the rights of others. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098, citing *In re Nevill* (1985) 39 Cal. 3rd 729, 735 and *In re Strick* (1987) 43 Cal.3rd 644, 653.)

## **Causes for Discipline**

8. Cause exists to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490 and 4301, subdivisions (h), (k), and (l), in that respondent administered to himself alcohol placing the public and himself in danger; and was convicted of two DUI's that are substantially related to the qualifications, functions, and duties of a pharmacy technician registrant. (Factual Findings 2 and 3).

## **Respondent's Arguments Regarding Equitable Principles**

9. Respondent contends that the September 15, 2015 DUI conviction should not be considered in this matter for discipline since the board already issued a disciplinary citation (Factual Finding 8) regarding this 2015 DUI. It was not established that the previous citation precludes or is a bar to further discipline. In addition, the previous citation put respondent on notice that this conduct could subject respondent to discipline and it is a part of respondent's disciplinary history and is therefore relevant to the determination of the appropriate discipline at this time. Respondent does not cite any applicable authority in support of his contention that the previous disciplinary citation cannot be considered. All other equitable contentions raised by respondent were considered but were deemed to be unpersuasive.

## **Evaluation of Appropriate Discipline**

10. California Code of Regulations, title 16, section 1769, subdivision (b), states:

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, in any, of rehabilitation submitted by the licensee.

11. California Code of Regulations, title 16, section 1760, states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 10/2007), which are hereby incorporated by reference.

Deviation from these guidelines and orders, including the stand terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems.

12. The board's Disciplinary Guidelines state that the board files cases against pharmacy technicians when the violations involve significant misconduct on the part of the licensee, including multiple DUI convictions. The board believes that revocation is typically the appropriate penalty when such grounds for discipline are found to exist.

13. The board's Disciplinary Guidelines list the following factors to be considered in determining penalties:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. Actual or potential harm to the public
2. Actual or potential harm to any consumer
3. Prior disciplinary record, including level of compliance with disciplinary order(s)
4. Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. Number and/or variety of current violations
6. Nature and severity of the act(s), offense(s) or crime(s) under consideration
7. Aggravating evidence
8. Mitigating evidence
9. Rehabilitation evidence
10. Compliance with terms of any criminal sentence, parole, or probation
11. Overall criminal record



12. If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code

13. Time passed since the act(s) or offense(s)

14. Whether the conduct was intentional or negligent, demonstrated incompetence, or, in the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct

15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

14. Applying the board's criteria in this matter, respondent's offenses did not occur during the course of his job as a registered pharmacy technician. Respondent also presented excellent letters of his character and exemplary work performance from seven of his supervising pharmacists and colleagues. However, his four DUI's are very serious in nature and his long-term alcohol abuse/addiction is of grave concern. Respondent has a criminal history dating back to 2006. He also has a record of violating a previous court probation imposed in 2015. Respondent is currently on court probation until February 2021, for his fourth DUI conviction which was only two years ago. He has not completed his current 18-month Drinking Driving Program, or completed paying his fees and fines. In addition, respondent has also been the subject

to prior disciplinary action by the board; a citation for unprofessional conduct for three violations of the Business and Professions Code sections 4301, subdivision (h), (k), and (l) for his 2015 DUI (Factual Finding 8).

15. Respondent has remained sober since his last DUI on July 4, 2017, and admits it is a struggle every day to remain clean and sober and relies solely on his family for support and relapse prevention. He stopped attending AA in March 2019, and does not have any sponsor or understands the AA 12-step program. The board is very concerned that respondent is susceptible to a relapse during this period of his recovery without a support system in place and he is unaware that his previous actions showed a total disregard for the law and the safety of the public. The board commends respondent's current efforts in his recovery, however it feels that there needs to be more time to elapse to assure the board that respondent will continue to be successful in his recovery and rehabilitation. Respondent has promised the board previously that he has learned his lesson and will not drink and drive and in fact he reoffended. Considering this is respondent's third attempt to remain clean and sober the board rightfully is concerned that respondent may relapse again, especially without having a stronger support mechanism in place (i.e. alcohol abuse therapy/treatment, regular AA meetings, an AA sponsor, etc.) and although he is hopeful he will succeed in his recovery, he needs more time to demonstrate that he has fully rehabilitated.

16. Due to the present lack of evidence of rehabilitation, and the nature and seriousness of offenses for which respondent was convicted, allowing respondent to remain registered as a pharmacy technician, even on a probationary basis, poses a threat to public health and safety, and therefore require the revocation of his registration at this time. After an appropriate length of time leading a law-abiding life

and compiling evidence of his rehabilitation, respondent may consider filing a petition for reinstatement of his pharmacy technician registration.

## **Costs**

17. Complainant is seeking recovery of the reasonable costs of prosecution in the amount of \$4,375. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.” The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the merits of his or her position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline, and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

18. The costs claimed totaling \$4,375 are reasonable. However, respondent had a subjective good faith belief of his defense and a “colorable challenge” to the proposed discipline. Finally, as established by his multiple financial obligations, respondent has limited ability to pay the costs of prosecution therefore the costs are reduced by 50 percent or in the amount of \$2,187.50.

## ORDER

1. Respondent Jaime Daniele Di Fiore's Pharmacy Technician License No. TCH 101440 is revoked. Respondent may not reapply or petition the board for reinstatement of his revoked registration for three years from the effective date of this decision.

2. A condition of reinstatement shall be that the respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4) and provides satisfactory proof of certification to the board.

3. As a condition precedent to reinstatement of his revoked pharmacy technician registration respondent shall reimburse the board for its costs of prosecution in the amount of \$2,187.50. Said amount shall be paid in full prior to the reapplication or reinstatement of his revoked pharmacy technician registration, unless otherwise ordered by the board.

DATE: February 13, 2020

DocuSigned by:  
*Adrienne Miller Contractor*  
EBA1415E8C7B42A...  
ADRIENNE MILLER  
Administrative Law Judge  
Office of Administrative Hearings

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7  
8 ISABEL BARRAZA, Legal Analyst

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

12 In the Matter of the Accusation Against:

Case No. 6507

13 **JAIME DANIELE DI FIORE**  
14 **1040 Clubhouse Drive**  
**Hayward, CA 94541**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration No. TCH**  
16 **101440**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity  
22 as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about September 1, 2010, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 101440 to Jaime Daniele Di Fiore (Respondent). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on June 30, 2020, unless renewed.

27 ///

28 ///

## **JURISDICTION**

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

4. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

5. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

6. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, section 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code section 11000 et seq.].

## **STATUTORY AND REGULATORY PROVISIONS**

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

8. Section 4301 of the Code states:

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

“ . . .

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

1 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
2 the public the practice authorized by the license.

3 “...

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

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

24 9. California Code of Regulations, title 16, section 1770, states:  
25  
26  
27  
28

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

#### 7 **COSTS**

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licentiate found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
13 included in a stipulated settlement.

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

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

16 11. Respondent is subject to disciplinary action under section 4301(l) and/or section 490  
17 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the  
18 conviction of a substantially related crime, in that on or about February 28, 2018, in a criminal  
19 proceeding titled *People of the State of California vs. Jamie Daniele DiFiore*, Case No. 17-CR-  
20 039998 in Alameda County Superior Court, Respondent was convicted by his plea of no contest  
21 of violating Vehicle Code section 23152(b) (DUI Alcohol/0.08% or above), a Misdemeanor.  
22 Respondent was sentenced to serve thirty (30) days in jail, with credit for time served of two (2)  
23 days, ½ time eligible through the Weekend Work Program, was required to enroll in and  
24 complete an 18 month Drinking Driver Program, and was required to pay fines and fees. The  
25 court further restored the remaining terms and conditions imposed in Respondent’s prior Alameda  
26 County Court Case, No. 464658. The underlying circumstances are as follows:

27 12. On or about July 4, 2017, at approximately 6:01 p.m., a California Highway Patrol  
28 (CHP) officer initiated a traffic stop after observing a vehicle travelling at a high rate of speed,



1 which he visually estimated to be approximately 85 miles per hour (MPH). The CHP Officer  
2 utilized a lidar unit and received a digital reading of 86 MPH. While speaking to the driver, the  
3 officer detected the odor of an alcoholic beverage emitting from within the vehicle. Respondent  
4 admitted to the officer that he had consumed two beers earlier. Respondent was asked to exit the  
5 vehicle at which time the officer detected the odor of an alcoholic beverage on his breath and  
6 person. Respondent failed to perform a series of FSTs as explained and demonstrated.  
7 Respondent submitted to a Preliminary Alcohol Screening (PAS) which resulted in breath alcohol  
8 concentrations of 0.087% at 6:14 p.m. and 0.085% at 6:16 p.m. Respondent was placed under  
9 arrest for driving under the influence of alcohol. A check of Respondent's driver license showed  
10 that he was on active DUI probation and had a requirement for an Ignition Interlock Device (IID)  
11 on any vehicle he drove. A check of the subject vehicle showed he did not have an IID. A small  
12 child approximately one year of age was in a child seat in the rear of the vehicle. The vehicle and  
13 child were released to Respondent's wife, who was a passenger. Respondent was transported and  
14 booked into the Santa Rita Jail where he submitted to a chemical blood test at 6:50 p.m. The  
15 chemical blood tested resulted in an alcohol concentration of 0.11%.

16           13. On or about December 29, 2017, Respondent was charged in Alameda County  
17 Superior Court Case No. 17-CR-039998 with violation of Vehicle Code section 23152(a)  
18 (Driving Under the Influence of Alcohol), a misdemeanor, Vehicle Code section 23152(b)  
19 (Driving While Having a 0.08% or High Blood Alcohol), a misdemeanor, Vehicle Code section  
20 23247(e) (Driving without an I.D.), a misdemeanor, and Penal Code Section 273a(b) (Child  
21 Endangerment), a misdemeanor. The pleading further alleged Respondent's prior DUI conviction  
22 on September 15, 2015, as an enhancement.

23           14. On or about February 28, 2018, Respondent pled no contest and was convicted of  
24 count 2, Vehicle Code Section 23152(b) (DUI Alcohol/0.08% or above). Respondent admitted  
25 the prior conviction on September 15, 2015. The court dismissed the remaining counts and  
26 granted a three year probation period under the terms described in paragraph 11, above.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially Related Crime)**

3 15. Respondent is subject to disciplinary action under section 4301(l) and/or  
4 section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770,  
5 for the conviction of a substantially related crime, in that on or about September 15, 2015, in a  
6 criminal proceeding titled *People of the State of California vs. Jamie Daniele DiFiore*, Case No.  
7 464658 in Alameda County Superior Court, Respondent was convicted by his plea of no contest  
8 of violating Vehicle Code section 23152(a) (DUI Alcohol), a misdemeanor, and of violating  
9 Vehicle Code section 23152(b) (DUI/Alcohol/0.08% or above), a misdemeanor. Both counts  
10 were further enhanced by prior DUI convictions on about June 29, 2006. Both counts were  
11 enhanced because of an excessive blood alcohol of 0.15% or more. Respondent was sentenced to  
12 probation for five years under the following terms and conditions: serve 120 days in jail (referral  
13 to Electronic Surveillance Program/Electronic Monitoring), enroll in and complete 18 month  
14 Drinking Driver Program, installation of an Ignition Interlock Device, payment of fines and fees,  
15 restitution, driver's license revoked for three (3) years, and designation as a Habitual Traffic  
16 Offender. The underlying circumstances are as follows:

17 16. On or about July 16, 2015, a California Highway Patrol (CHP) officer was dispatched  
18 to investigate a solo vehicle traffic collision. The involved vehicle had sustained damage to its  
19 front, rear, and right sides. The officer contacted Respondent who stated that he fell asleep while  
20 driving at approximately 45 miles per hour (MPH) and when he woke up he saw a "wide, 10 foot  
21 plastic thing" in the roadway ahead of him, which he swerved his vehicle to avoid, and hit the  
22 roadway shoulder. A witness statement contradicted Respondent's statement. The witness stated  
23 that he saw Respondent's vehicle travelling at a high rate of speed and saw the vehicle spin out of  
24 control when making an abrupt lane change. While speaking to Respondent, the officer noted  
25 Respondent's red, watery eyes, and the odor of an alcoholic beverage emitting from his breath.  
26 Respondent admitted to the officer that he had earlier consumed three shots of whiskey and three  
27 beers at a restaurant in San Jose. Respondent failed to perform a series of FSTs as explained and  
28 demonstrated. Respondent submitted to a Preliminary Alcohol Screening (PAS) which resulted

1 in breath alcohol content (BAC) of 0.167% and 0.152%. Respondent was placed under arrest for  
2 violating Vehicle Code section 23152(a) (Driving Under the Influence of Alcohol). Respondent  
3 agreed to take a blood test which showed a BAC of 0.17%.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Dangerous Use of Alcohol/Drugs)**

6 17. Respondent is subject to discipline under section 4301(h) of the Code, in that as  
7 described in paragraphs 11 through 16, above, Respondent used alcohol/drugs to an extent or in a  
8 manner dangerous or injurious to himself, or to any other person, or to the extent he impaired his  
9 ability to conduct with safety to the public the practice authorized by his license.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Alcohol Related Convictions)**

12 18. Respondent is subject to discipline under section 4301(k) of the Code, in that  
13 Respondent was convicted of more than one criminal offense involving the use, consumption or  
14 self-administration of an alcoholic beverage, as set forth above in paragraphs 11 through 16.

15 **DISCIPLINE CONSIDERATIONS**

16 19. To determine the degree of discipline, if any, to be imposed on Respondent,  
17 Complainant alleges that on or about June 29, 2006, in a prior criminal proceeding entitled *People*  
18 *of the State of California v. Jamie Daniele DiFiore* in Alameda County Superior Court, Case No.  
19 215016-9, Respondent pled no contest and was convicted of violating Vehicle Code section  
20 23152(b) (Driving Under the Influence of Alcohol 0.08% or above), a misdemeanor, with  
21 enhancement per Vehicle Code section 23582 (Driving at Excessive Speed). According to court  
22 records, Respondent had a blood alcohol content (BAC) of 0.13%. Respondent was sentenced to  
23 probation for three (3) years under terms and conditions including serving 60 days in jail (referral  
24 to Alameda County Sheriff Weekend Work Program), enroll and complete a Drinking Driver  
25 Program (DDP), payment of fines and fees, restitution, and driver's license suspension for one (1)  
26 year.

27 ///

28 ///

20. Complainant further alleges that on or about June 29, 2006, in a prior criminal proceeding titled *People of the State of California v. Jamie Daniele DiFiore* in Alameda County Superior Court, Case No. 217508, Respondent was convicted on his plea of no contest of violating Vehicle Code section 23152(b) (Driving Under the Influence of Alcohol 0.08% or above), a misdemeanor, and Vehicle Code section 2800.1(a) (Evading a Peace Officer). Respondent was sentenced to three (3) years probation with terms and conditions, including serving 120 days in jail, enroll and complete a Drinking Driver Program (DDP), payment of fines and fees, restitution, and driver's license suspension for one (1) year.

**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 101440, issued to Jaime Daniele Di Fiore;
2. Ordering Jaime Daniele Di Fiore to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: January 15, 2019



ANNE SODERGREN  
Interim Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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