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

In the Matter of the Accusation Against:

TASHANA MARIE JAFFEE, aka TASHANA MARIE ZEIGLER Pharmacy Technician Registration No. TCH 92887, Respondent.

Agency Case No. 6538

OAH No. 2019120943

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

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Greg Lippe
Board President

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In the Matter of the Accusation Against:

TASHANA MARIE JAFFEE, aka TASHANA MARIE ZEIGLER,

Pharmacy Technician Registration No. TCH 92887

Respondent.

Case No. 6538

OAH No. 2019120943

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on February 10, 2020, in Oakland, California.

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

Respondent Tashana Marie Jaffee appeared at the hearing and represented herself.

The record closed and the matter was submitted for decision on February 10, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

- 1. Complainant Anne Sodergren, Interim Executive Officer of the Board of Pharmacy (Board), issued the Accusation solely in her official capacity.
- 2. On August 28, 2009, the Board issued Pharmacy Technician Registration Number TCH 92887 to respondent Tashana Marie Jaffee, also known as Tashana Marie Zeigler. This registration was in full force and effect at all times relevant to the charges in the Accusation and will expire on August 31, 2021, unless renewed.

Respondent's Criminal History and Citation History

3. On June 27, 2012, respondent was convicted in the Superior Court of California, County of Sonoma, pursuant to her plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with blood alcohol content of 0.08 percent or greater), a misdemeanor. Imposition of sentence was suspended, and respondent was granted a 36-month conditional sentence, with terms and conditions including completing a first offender drinking driver program and not driving with any alcohol in her system.

The offense occurred on June 6, 2012. Respondent was pulled over at 1:49 a.m., after a police officer observed her driving erratically. The officer detected a strong odor of alcoholic beverages emitting from respondent, who denied having consumed alcohol. Respondent performed poorly on the field sobriety tests and refused breath

testing. A blood test was later performed. The criminal complaint alleged that her blood alcohol content was in excess of 0.15 percent.

As a disciplinary consideration, it was established that as a result of this conviction, the Board issued Citation No. 2011 52855 against respondent on March 5, 2013, assessing a \$400 fine. Respondent paid the fine on April 9, 2013.

4. On February 6, 2015, respondent was convicted in the Superior Court of California, County of Sonoma, pursuant to her plea of no contest, of another violation of Vehicle Code section 23152, subdivision (b), with enhancements for having a blood alcohol content greater than 0.15 percent and having a prior conviction. Imposition of sentence was suspended, and respondent was granted a 36-month conditional sentence, with terms and conditions including serving 45 days in jail with a referral to work release, attending a multiple offender drinking driver program, installing an interlock device for 36 months, not driving with any alcohol in her system, and not possessing or using any alcohol.

The offense occurred on January 17, 2015 at approximately 1:44 a.m.

Respondent was still on probation for the 2012 offense. Respondent was observed turning out of the parking lot of a bar and striking a pedestrian crossing sign in the center of the roadway. The arresting officer detected a strong odor of alcohol on respondent's breath, and respondent spoke in a slow and slurred manner. Respondent performed poorly on field sobriety tests. Blood testing was performed about an hour later, and respondent's blood alcohol content was measured as 0.23 percent.

As a disciplinary consideration, it was established that as a result of this conviction, the Board issued Citation No. 2014 64325 to respondent on July 20, 2015, assessing a \$3,000 fine. Respondent paid the fine on August 10, 2015.

5. On April 25, 2016, respondent was convicted in the Superior Court of California, County of Sonoma, pursuant to her plea of no contest, of violating Penal Code 594, subdivision (a) (vandalism). Imposition of sentence was suspended, and respondent was granted a conditional sentence for 24 months, on terms and conditions which included serving 10 days in jail with a referral to work release, not possessing or using alcohol or controlled substances, and staying away from the victim.

The offense occurred on April 2, 2016, at approximately 10:42 p.m. Respondent broke the window of her former residence over a dispute with her former roommate over mail. The arresting officer observed that respondent appeared to be intoxicated; she had trouble standing, had bloodshot eyes, and slurred her speech.

As a disciplinary consideration, it was established that as a result of this conviction, the Board issued Citation No. 2015 69944 to respondent on August 8, 2016, assessing a \$500 fine. Respondent paid the fine on September 23, 2016.

6. Scott Huhn, an Inspector for the Board, and a licensed pharmacist of more than 38 years, explained the concerns raised by respondent's criminal history. Huhn explained that pharmacy technicians are responsible for order entry, dispensing, retrieval of inventory, and interacting with customers. They work under the direction of pharmacists but must exercise good judgment and be able to work independently and stay focused. Attention to detail is critical and pharmacy technicians must not be impaired by drugs or alcohol. Huhn's testimony established that respondent's six-year history of alcohol-related arrests constitutes unprofessional conduct.

Incident of March 4, 2018

7. On March 4, 2018, at around 8:00 p.m., Rohnert Park police officers were dispatched to investigate a report of a domestic disturbance in which a male pushed a female to the ground. Respondent was located in the area and matched the description given by the reporting party. The arresting officers observed signs that respondent was intoxicated: she emitted a strong odor of alcoholic beverages, her speech was slurred, and she was unable to form coherent sentences. Respondent was arrested for disorderly conduct involving drugs or alcohol, and for a probation violation, for failing to be of good conduct and not possessing or using alcohol. Once in custody, respondent was uncooperative and behaved erratically. She yelled, screamed, and laughed. She kicked the glass barrier in the police car, and stated to the officer, "I will fucking murder you."

Respondent's Evidence

- 8. Respondent has been working in the pharmacy industry since she was 18 years old. She was working in a coffee shop when the manager of a pharmacy recruited her. She started as an ancillary and then studied at Santa Rosa Junior College to become a pharmacy technician. She has worked for CVS Pharmacy and Kaiser Permanente. She is currently working for Safeway Pharmacy in Santa Rosa, where she is the lead pharmacy technician. Respondent is passionate about her work. She cares about best practices and cares about her patients. She explained that she has always made her employers aware of her legal issues and has never let these issues impair her work.
- 9. Respondent denied having a history of alcoholism and denies being a problem drinker. She acknowledged "sporadic incidents" involving over consumption

of alcohol, but she views these incidents as "temporary" and not indicative of a chronic disorder. She acknowledged that she should not have driven after drinking. She admitted that she was heavily intoxicated on the evening she broke the window of her former residence. Respondent explained that her two DUI offenses occurred during a difficult period in life when she was going through a divorce.

Respondent denied being intoxicated at the time of her March 4, 2018 arrest. She stated that she had been the victim of domestic violence and that her assailant spilled alcohol on her and struck her in the mouth, which made it difficult for her to speak. Her testimony regarding this incident was not entirely credible.

Respondent has attended some Alcoholics Anonymous meetings as part of her criminal probation, and she did not see herself belonging there. She has not had any other form of alcohol counseling or therapy.

Although she denies having a history of alcohol abuse, she stated that she has not been consuming any alcohol for the past 18 months because she developed a digestive intolerance for it.

Respondent testified that she is no longer on criminal probation for her offenses. She stated that her probation was not extended as a result of the March 2018 incident. She provided proof of her completion of an 18-month multiple offender program on June 14, 2019.

- 10. Respondent submitted several letters of support:
- a. In a letter dated December 6, 2019, Justin Bailey wrote that he has worked with respondent for four years as her pharmacy manager at CVS and Safeway pharmacies. Bailey described respondent as reliable, determined, extremely

competent, compassionate, and passionate about her work. He believes she is an asset to the pharmacy community. He did not address respondent's criminal history or the March 2018 incident.

- b. In a letter dated December 5, 2019, Kasia Whiting, PharmD., wrote that she worked closely with respondent at Safeway Pharmacy from early 2018 until September 2019. Whiting added that respondent learns quickly and works well with others, is dependable, empathetic, and has a comprehensive understanding of pharmacy practice. Whiting believes that respondent has integrity, and is honest, courteous, reliable, and trustworthy.
- c. In a letter dated November 5, 2019, pharmacist Emily Toney wrote that she worked with respondent from October 2018 through April 2019, at Safeway Pharmacy. Toney described respondent as personable, hard-working, efficient, and respectful. Toney added that respondent always volunteered to help out at other locations when needed, and that she "goes above and beyond to help, both patients and co-workers." Toney added that respondent's personal life outside of work did not interfere with her duties. Toney is confident that respondent will do whatever the Board requires to remain in good standing.
- d. In a letter dated February 6, 2020, Amanda Jones, a registered pharmacy technician, wrote that she has worked with respondent for about five years, at CVS and at Safeway. Jones wrote that respondent has a positive attitude, is a dependable co-worker, and she trusts in her judgment.
- e. In a letter dated February 7, 2020, Myranda Munoz wrote that she is respondent's manager at Safeway Pharmacy and has known respondent for six months. Munoz described respondent as trustworthy, caring, and attentive to detail.

She added that respondent goes above and beyond for patients and receives frequent compliments.

- f. In a letter dated December 4, 2019, Daniel Harris wrote that he has known respondent for over four years, "as a partner and friend." Harris wrote that respondent's job is very important to her and she has a very high work ethic, always going above and beyond what is demanded of her.
- 11. In connection with the prosecution of this Accusation, the Department of Justice has billed \$7,270, including more than 20 hours billed for pleading preparation. The costs assessed for the preparation of an Accusation that is less than six pages long are not reasonable. The costs will be reduced by \$1,200, to \$6,070.

LEGAL CONCLUSIONS

- 1. Business and Professions Code section 4301, subdivision (I), in connection with California Code of Regulations, title 16, section 1770, provides that the Board may discipline a pharmacy technician who has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician. Respondent has been convicted of three misdemeanor offenses, which are substantially related convictions because they evidence respondent's potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety, or welfare. Cause for discipline was established in light of the matters set forth in Findings 3 through 5.
- 2. Business and Professions Code section 4301, subdivision (k), in connection with subdivision (l), provides that the Board may discipline a pharmacy technician who has been convicted of more than one misdemeanor involving alcohol.

Respondent's three misdemeanor convictions involved the use of alcohol. Cause for discipline was established in light of the matters set forth in Findings 3 through 5.

- 3. Business and Professions Code section 4301, subdivision (h), provides that the Board may discipline a pharmacy technician for the dangerous use of controlled substances or alcoholic beverages. Respondent's three convictions involved the dangerous use of alcohol. Respondent's March 4, 2018, arrest arose from her use of alcohol in a manner dangerous to herself. Her denial of consuming alcohol was not credible. Cause for discipline was established in light of the matters set forth in Findings 3 through 7.
- 4. Business and Professions Code section 4301 provides that the Board may discipline a pharmacy technician for unprofessional conduct. The conduct underlying respondent's three convictions and her March 4, 2018 arrest involved unprofessional conduct. Cause for discipline was established in light of the matters set forth in Findings 3 through 7.
- 5. The Board has established disciplinary guidelines for evaluating the appropriate penalty to impose on a licensee who is subject to discipline. The factors to be considered include actual or potential harm to pharmacy consumers or the public, prior disciplinary record, prior warnings, number of current violations, nature and severity of the acts under consideration, compliance with terms of probation, overall criminal record, whether the convictions have been dismissed pursuant to Penal Code section 1203.4, time that has passed since the acts, whether the conduct demonstrated incompetence, financial benefit from the misconduct, mitigating and aggravating evidence, and evidence of rehabilitation.

The guidelines provide examples of mitigating evidence, which includes: written statements from individuals with on-the-job knowledge of the individual's competence, letters from counselors in recovery or rehabilitation programs, letters attesting to participation in support groups, drug screens, assessment reports by physicians, letters from probation officers, letters signed under penalty of perjury from persons familiar with the individual's character and rehabilitation.

6. Respondent incurred three alcohol-related convictions between 2012 and 2016. After each offense, the Board issued a citation and afforded her the opportunity to prove that she could refrain from unprofessional conduct. Respondent has been unable to do so. In 2018, respondent was again arrested. She demonstrated objective signs of intoxication, and her belligerent behavior upon arrest was alarming and consistent with intoxication.

Despite four alcohol-related incidents, respondent has not sought alcohol counseling and denies having an alcohol problem. Under these circumstances, the Board cannot be assured that respondent will continue to abstain from alcohol and will maintain professional conduct in the future.

It is acknowledged that respondent has worked in the pharmacy industry for 13 years and there have been no work-related incidents. She submitted favorable letters from pharmacists and colleagues which establish that she is a dedicated and valued employee. Nonetheless, in light of the seriousness of the misconduct and lack of evidence of rehabilitation, it would be against the public interest to permit respondent to retain her pharmacy technician registration. Revocation is warranted for the protection of the public.

7. Business and Professions Code section 125.3 authorizes the Board to recover its reasonable costs of investigation and enforcement from a licensee who has been found to have violated licensing laws. Respondent has violated licensing laws. (Legal Conclusions 1 through 4.) Costs in the amount of \$6,070 have been found to be reasonable. (Factual Finding 11.)

In Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32, the California Supreme Court sets forth standards by which a licensing board must exercise its discretion to reduce or eliminate costs awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of 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 to the alleged misconduct. Respondent has already paid citation penalties based on some of the same conduct alleged in the Accusation. A reduction in costs is warranted. Respondent will be ordered to pay costs in the amount of \$2,500.

ORDER

- 1. Pharmacy Technician Registration No. TCH 92887 issued to respondent Tashana Marie Jaffee, also known as Tashana Marie Zeigler, is revoked.
- 2. Respondent shall pay the Board enforcement costs in the amount of \$2,500.

DATE: March 3, 2020

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

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8	BEFORE THE	
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CALIFORNIA	
11	In the Matter of the Accusation Against:	Case No. 6538
12	TASHANA MARIE JAFFEE	ACCUSATION
13	aka TASHANA MARIE ZEIGLER 2751 Center Road	
14	Novato, CA 94947	
15	Pharmacy Technician Registration No. TCH 92887	
16	Respondent.	
17	PARTIES.	•
18	Anne Sodergren (Complainant) brings this A	ccusation solely in her official capacity
19	as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
20	2. On or about August 28, 2009, the Board of Pharmacy issued Pharmacy Technician	
21	Registration Number TCH 92887 to Tashana Marie Jaffee aka Tashana Marie Zeigler	
22	(Respondent). The Pharmacy Technician Registration was in full force and effect at all times	
23	relevant to the charges brought herein and will expire on	August 31, 2021, unless renewed.
24	JURISDICTION	<u>N</u>
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
26	Consumer Affairs, under the authority of the following laws. All section references are to the	
27	Business and Professions Code unless otherwise indicate	d.
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4.	Section 4300, subdivision (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.

STATUTORY PROVISIONS

6. 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 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.

(1) 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.

 REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 1770, states in pertinent part that:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, 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.

COST RECOVERY

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

FACTUAL ALLEGATIONS

- 9. On or about June 27, 2012, in Sonoma County Superior Court Case No. SCR619872, Respondent was convicted of having violated Vehicle Code section 23152(b) (Driving With Blood of Alcohol of 0.08 Percent or Greater), a misdemeanor. The underlying circumstances are that on or about June 6, 2012, during a routine enforcement stop, Santa Rosa Police Department Officers observed Respondent showing signs and symptoms of intoxication. Respondent performed poorly in field sobriety testing. Respondent refused breath testing prior to arrest.
- 10. On or about February 6, 2015, in Sonoma County Superior Court Case No. SCR6611298, Respondent was convicted of having violated Vehicle Code section 23152(b) (Driving With Blood of Alcohol of 0.08 Percent or Greater), a misdemeanor, with enhancements pursuant to Vehicle Code section 23578 for driving with a blood alcohol content (BAC) of 0.15 percent or more, and having a prior DUI conviction. The underlying circumstances are that on or about January 17, 2015, Cotati Police conducted an enforcement stop after observing Respondent driving erratically. The officers subsequently arrested Respondent based on her driving, obvious

¹ Respondent's vehicle struck a pedestrian crossing sign in the center of the roadway, then backed up, almost striking another parked vehicle before continuing down the roadway, drifting from one lane to the next for approximately a quarter of a mile before stopping.

signs and symptoms of intoxication, and her poor performance in field sobriety tests. The officers checked Respondent's criminal records and found that she was still on probation from a previous DUI arrest.

11. On or about April 25, 2016, in Sonoma County Superior Court Case No. SCR680012, Respondent was convicted of having violated Penal Code section 594(a) (Vandalism), a misdemeanor. The underlying circumstances are that on or about April 2, 2016, Rohnert Park Police were dispatched to investigate a residential disturbance. Respondent's former roommate reported to the officers that Respondent showed up at the residence and shattered a window near the front door and then ran away. Officers who located Respondent nearby the residence noted that she appeared to be under the influence of alcohol.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

12. Respondent is subject to discipline under section 4301(l) of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of the substantially related crime(s) described in paragraphs 9 through 11, above.

SECOND CAUSE FOR DISCIPLINE

(Alcohol Related Convictions)

13. Respondent is subject to discipline under Code section 4301(k), defined in section 4301(l) of the Code, in that as described in paragraphs 9 - 11, above, Respondent was convicted of more than one misdemeanor involving the use or consumption of alcohol.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

14. Respondent is subject to disciplinary action under Code section 4301(h) for dangerous use of alcohol, as described in paragraphs 9-11, above, and because on or about March 4, 2018, Rohnert Park Police Department Officers were dispatched to investigate a report of a victim being pushed to the ground during a possible domestic disturbance. Based on a witness description, police located Respondent in the area. Officers noted that Respondent had the strong odor of an alcoholic beverage on her breath and person. Officers observed that her speech was

slurred and that she was unable to put together coherent sentences. Further, she could not provide the officers with a home address. The officers ran a records check on Respondent and were advised by dispatch that Respondent was on probation for driving under the influence with a blood alcohol level of .08 percent or greater. Respondent was arrested and charged with violation of probation. Respondent resisted officers when they attempted to transport her to the Sonoma County detention facility. Respondent began yelling and kicking the patrol car's glass partition from the back seat and told one of the officers that she would murder him. Jail staff escorted Respondent to the facility for booking.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under Code section under code section 4301, in that the conduct described in paragraphs 9-14, above, constitutes unprofessional conduct.

DISCIPLINE CONSIDERATIONS

- 16. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant further alleges:
- 17. On or about March 5, 2013, the Board issued Citation 2011 52855 assessing a fine of \$400.00 against Respondent based on the conduct described in paragraph 9, above. Respondent paid the fine on April 9, 2013.
- 18. On or about July 20, 2015, the Board issued Citation 2014 64325 assessing a fine of \$3,000.00 against Respondent based on the conduct described in paragraph 10, above.

 Respondent paid the fine on August 10, 2015.
- 19. On or about August 8, 2016, the Board issued Citation 2015 69944 assessing a fine of \$500.00 against Respondent based on the conduct described in paragraph 11, above. Respondent paid the fine on September 23, 2016.

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:

(TASHANA MARIE JAFFEE) ACCUSATION