

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

**In the Matter of the Petition for Early Termination of
Probation of:**

DWIGHT LEE KIEFFER, RPH 70160, Petitioner

Agency Case No. 6702

OAH No. 2024030298

DECISION

This matter was heard by a quorum of the Disciplinary Petition Committee (Committee) of the Board of Pharmacy (Board) under Business and Professions Code section 4309, subdivision (c), by videoconference on March 13, 2024. Administrative Law Judge Alan R. Alvord, Office of Administrative Hearings, State of California, presided, assisted, and advised the Committee in the conduct of the hearing under Government Code section 11517, subdivision (b)(1).

Kristina Jarvis, Deputy Attorney General, Office of the Attorney General, Department of Justice, appeared under Government section 11522.

Dwight Lee Kieffer, petitioner, represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 13, 2024.

FACTUAL FINDINGS

License History and Jurisdictional Matters

1. The Board issued Pharmacist License No. RPH 70160 to petitioner on November 8, 2013. The license is in full force and effect and will expire on January 31, 2025.

2. Petitioner submitted his petition for early termination of probation on September 3, 2023. The Board set the matter for hearing before the Committee, sent notice of the hearing, and petitioner stipulated to electronic recording of the hearing. Petitioner has completed two years of probation and is eligible to petition for early termination.

Accusation, Hearing, and Decision Granting Probation

3. The Board's Executive Officer issued an accusation against petitioner on December 12, 2019. The accusation alleged that petitioner was convicted in February 2019 of a misdemeanor count of violating Vehicle Code section 23152, subdivision (a) – driving under the influence of alcohol, in the Superior Court of California, County of Los Angeles. The underlying circumstances involved a hit-and-run traffic collision in September 2018. Petitioner had objective signs of intoxication and failed field sobriety tests. A breath test measured petitioner's blood alcohol concentration at 0.196 percent.

4. The accusation matter proceeded to administrative hearing before an administrative law judge (ALJ) in October 2020. On January 12, 2021, the Board adopted the ALJ's proposed decision as its own. The decision found that petitioner had attended a pool party and consumed several mixed drinks, then drove home while intoxicated. His vehicle struck a parked vehicle and then petitioner drove away. He came to a stop "not far away" from the scene.

5. In aggravation, the decision found that petitioner had a 2013 conviction for driving under the influence in West Virginia. Petitioner completed a drug and alcohol deferral program, and the conviction was expunged in 2018.

6. Also in aggravation, the decision found the Board issued Citation No. CI 2016 71151 to petitioner on July 25, 2016, for violating California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A), with an administrative fine of \$1,000. The citation was based on an inspection in November 2015 in which a Board inspector found that a pharmacy technician under petitioner's supervision gave a new prescription to a patient without offering a pharmacist consultation.

7. At the hearing in the underlying disciplinary matter, petitioner testified about childhood trauma and his family's refusal to accept his sexual orientation. On the date of the traffic collision, he attempted to have a conversation with his mother about his childhood trauma. His mother did not wish to discuss the matter with him. He was "anxious" and "hyper aroused" after the conversation, then went to the pool party. He drank alcohol excessively because it was his coping mechanism. He testified frankly and forthrightly about his excessive use of alcohol, admitting that he sometimes drank alcohol to the point of blacking out. At that hearing he testified that he stopped drinking hard alcohol or mixed drinks but continued to drink wine socially. He completed his court-mandated 52 sessions of Alcoholics Anonymous (A.A.) but did

not find it to be useful to him. He requested that probationary terms not include bodily fluid testing and participation in A.A. Petitioner testified that he found better results from individual therapy and had voluntarily continued with therapy beyond the court-ordered 26 therapy sessions.

8. Concerning the 2015 citation, petitioner testified at the underlying disciplinary hearing that he has learned to build stronger relationships with pharmacy technicians and to have conversations with them each day to reiterate their job duties.

9. Following that hearing, the Board revoked petitioner's license, stayed the revocation, and placed his license on four years' probation with terms and conditions including psychotherapy, participation in the Pharmacists Recovery Program (PRP), drug and alcohol testing, facilitated group recovery meetings, substance abuse recovery relapse prevention support group meetings, and cost recovery of \$6,511.25.

Petition for Early Termination of Probation

PROBATION COMPLIANCE

10. Petitioner completed all mandatory reports to the Board, paid the cost recovery in full, paid all probation monitoring costs, complied with the employment requirement, complied with the psychotherapy requirement and therapy was deemed no longer needed, complied with the PRP and entered the transition phase in July 2023, complied with all drug and alcohol testing through the PRP, and began attending the substance abuse recovery support group through the PRP.

EMPLOYMENT PERFORMANCE EVALUATIONS

11. At the time of his disciplinary hearing in 2020, petitioner had been employed at Alto Pharmacy since 2018. His employment at Alto Pharmacy has

continued throughout his probation. He is a Learning and Development Pharmacist Instructor. In July 2023, petitioner's manager gave him the highest rating: "Top Tier Talent." The manager described petitioner as "the Swiss army knife that can adapt to any situation they are placed in." In December 2022, petitioner's manager wrote about petitioner's cost-saving initiatives, improvements in intake automation, and identifying inappropriate billing override codes. Petitioner's critical thinking and fact finding eliminated redundancy in data check roles and created automatic controls for waste reduction due to incorrect package sizing, improved candidate hiring processes, trained new hire technicians, and he led training for poor performing care specialists. "His ability to be methodical in his approach of not only his projects but time management is impressive and leaves me in awe..... His attention to detail and resilience is a pillar for Sr. Leadership to lean on when deciding on direction."

AUTOMATIC ARREST AND CONVICTION RECORD RELIEF

12. On July 13, 2023, petitioner was granted automatic arrest record relief under Penal Code section 851.93 and conviction record relief under Penal Code section 1203.425.

REFERENCE LETTERS

13. Jennifer Adderly, RN, LMFT, who has worked in addiction medicine as both a registered nurse and therapist, stated that petitioner has primarily dealt with his family of origin dynamics and dysfunction, and has been able to identify triggers and take personal accountability and demonstrated new and healthier coping skills and new and effective forms of communication. Petitioner has sustained remission from alcohol use disorder and his prognosis suggests that he will maintain his ability to function upholding the safety standards of his profession and license.

14. Rose Safran, MA, MFT, who facilitates the peer recovery support group through the PRP, stated that petitioner has adhered to all conditions of probation including toxicology screening with 100 percent negative results. Petitioner has examined his pattern of alcohol use and how it impaired aspects of his social interactions. He began to learn new skills in dealing with the stressors of life and developed an appreciation for the value of Alcoholics Anonymous meetings. Petitioner is currently in sustained remission from alcohol use disorder for over two and one-half years, giving him an excellent prognosis for full sustained remission.

15. So Young An, Pharm.D., RPH 80219, who works with petitioner and has "had the distinct honor of witnessing [his] exceptional qualities firsthand over the course of five enriching years," described him as:

a paragon of virtuous behavior, both in his personal interactions and professional engagements. His dedication to upholding the highest ethical standards is a beacon that guides not only his actions but also those fortunate enough to collaborate with him. This commitment to integrity is reflected in his seamless integration of reliability into every facet of his life, transcending the boundaries of workplace and beyond.

16. Dr. An wrote further, "I wholeheartedly endorse his application for the termination of his probation. I firmly believe that he is destined to continue contributing profoundly to the field of pharmacy, exemplifying the values of dedication, integrity, and leadership that are synonymous with his distinguished persona."

17. Maria Luisa Roman, Pharm.D., RPH 78166, who works with petitioner and has “had the privilege of closely observing his transformation” since his probation began. Petitioner’s “dedication to maintaining sobriety,” “has been an inspiration to our team” and “positively impacted his interactions with colleagues, patients, and healthcare professionals.” Dr. Roman wrote, “I have witnessed a profound transformation in [petitioner’s] demeanor. He has become more approachable, compassionate, and receptive to feedback. The humbling experience he went through has shaped him into a better person and, consequently, into a better pharmacist.” “His journey of transformation is a testament to the power of resilience and personal growth, and he serves as a beacon of inspiration for our team and the broader pharmacy community.”

18. An attorney and friend of petitioner for eight years, who was petitioner’s roommate from 2021 to January 2023, described petitioner’s commitment to the probationary process and his strict sober lifestyle. “He never once slipped up or was untruthful. Instead, he focused on his career, mental and physical wellness and ensuring he came out of this probationary program an even better person and professional.” “He has never downplayed his role in what happened and instead has taken full responsibility for his actions.” The friend also described when she was diagnosed with terminal cancer. “He supported me in taking me to medical appointments, used his knowledge of medicine to explain things to me and talk with my doctor community to assist me with advocating for myself and planning.” When she had to travel across the country on short notice, petitioner “took care of all aspects of moving me out of our apartment and handling my belongings after I had moved out.”

PETITIONER'S TESTIMONY

19. Petitioner testified at the present hearing that he deeply regrets what happened but does not regret the person he has become. He has found a purpose. He has been sober for over three years. The structured environment of the PRP allowed him to become empowered to make positive changes in all aspects of his life. His daily recovery routine includes exercise, yoga, meditation, and daily reflections. He attends A.A. meetings and events and reads about sobriety. He surrounds himself with people who encourage recovery.

20. Petitioner testified he was proud to be able to help a friend through her cancer diagnosis and treatment. He would not have been able to support her without the tools he learned through recovery and sobriety. He did not experience a desire to use alcohol and it showed him the value of a purposeful life. His relationships with family have never been better. He wishes to terminate probation early as a testament to his progress and his commitment to sobriety.

21. Petitioner testified that in the earlier disciplinary hearing he was resistant to abstaining from alcohol and participating in recovery programs. It took the structure of the PRP program for him to realize that he is powerless. He has worked the 12 steps and made amends to people. "I didn't realize how freeing it was. I wanted to avoid it, but it helped me form connections with them." He has had a sponsor for almost two years who has kept him accountable and helped him realize he is not alone. He does not get triggered when around others who are drinking. He testified that he would not have found sobriety on his own without the PRP program. One of his goals after probation ends is to travel with friends to Mount Everest.

LEGAL CONCLUSIONS

1. A pharmacist or permit holder whose license or permit has been placed on probation for a period of three years or more may petition the Board for early termination of probation after at least two years have passed since the effective date of such discipline. (Bus. & Prof. Code, § 4309, subd. (a)(2).)

2. More than two years have passed since petitioner's probation period started. Thus, the petition is timely.

3. The petition may be heard by the Board sitting with an administrative law judge, or a committee of the Board sitting with an administrative law judge. Where the petition is heard by a committee of the Board, the decision shall be subject to review by the Board under Government Code section 11517. (Bus. & Prof. Code, § 4309, subd. (c).)

4. Petitioner bears the burden of proving by clear and convincing evidence that early termination of probation is appropriate. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091–1092.) When evaluating the Petition, the Board may consider: (1) all of the petitioner's activities since the disciplinary action; (2) the offense for which the petitioner was disciplined; (3) the petitioner's activities during the time the license was in good standing; (4) the petitioner's documented rehabilitative efforts; and (5) the petitioner's general reputation for truth and professional ability. (Bus. & Prof. Code, § 4309, subd. (d).)

5. Petitioner submitted evidence of a very strong recovery. He showed humility and took personal responsibility. He has admitted his problem and

confronted it face-on. After initially resisting participating in a formal recovery program and believing that he could maintain sobriety while still consuming alcohol socially, he has fully embraced the formal PRP program and credits it with his successful sobriety and the other positive changes in his life. Petitioner's employer has stood by him throughout his probation, which is a testament to his value as a pharmacist. He has glowing references from supervisors and colleagues.

6. The evidence established that public protection no longer requires petitioner's license to remain on probation.

ORDER

On May 24, 2024, the Board of Pharmacy, Department of Consumer Affairs, adopted the attached Decision, which reflects the Committee's recommendation, as its own. The petition for early termination of probation of Dwight Lee Kieffer, RPH 70160, is GRANTED.

This decision shall become effective at 5:00 p.m. on July 3, 2024.

It is so ORDERED on June 3, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

DWIGHT LEE KIEFFER,

Pharmacist License No. RPH 70160;

Respondent

Agency Case No. 6702

OAH No. 2019110699

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 February 11, 2021.

It is so ORDERED on January 12, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name and title.

By

Greg Lippe
Board President

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

In the Matter of the Accusation Against:

DWIGHT LEE KEIFFER, Respondent

Pharmacist License No. RPH 70160

Agency No. 6702

OAH No. 2019110699

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, heard this matter by videoconference on October 12, 2020, in Los Angeles, California.

Michelle Njim, Deputy Attorney General, represented Anne Sodergren (complainant), Interim Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Seth Weinstein, Attorney at Law, represented Dwight Lee Kieffer (respondent), who appeared at the hearing.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on October 12, 2020.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On November 8, 2013, the Board issued Pharmacist License number RPH 70160 to respondent. The license is scheduled to expire on January 31, 2021, unless renewed.

2. On December 12, 2019, complainant filed the Accusation in her official capacity. Respondent timely filed a Notice of Defense and a Request for Hearing. This hearing ensued.

Criminal Conviction

3. A. On February 15, 2019, respondent was convicted upon his plea of nolo contendere of violating Vehicle Code section 231521, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor. (Superior Court of California, County of Los Angeles, case number 8VV03993.)

B. For this conviction, respondent was placed on summary probation for 36 months under certain terms and conditions, including payment of \$923 in fines, fees, and restitution; attendance at 52 Alcoholics Anonymous (AA) meetings; completion of 26 psychological counseling sessions; and enrollment in a three-month first-offender alcohol education program. Respondent paid all of the fines, fees, and restitution. He completed the 52 AA meetings, the 26 sessions of psychological counseling, and the three-month first-offender alcohol education program. Respondent is currently on criminal probation, which is expected to terminate in February 2021.

C. The facts and circumstances surrounding this conviction, as established by the arrest report, are as follows: On September 15, 2018, respondent went to a pool party, during which he consumed several mixed drinks. At approximately 7:00 p.m., he drove home while intoxicated and struck a parked vehicle. Respondent drove away but came to a stop not too far away from the scene. When the arresting officers arrived and spoke to respondent, they noticed that his eyes were red and watery, his speech was slurred, and his breath emitted the odor of alcohol. Respondent was arrested on suspicion of DUI and transported to the Los Angeles Police Department North Hollywood Station. At the police station, officers administered Field Sobriety Tests (FST) to respondent, which he was unable to perform. At 8:30 p.m. and 8:55 p.m., officers administered breathalyzer tests to respondent. The results of both of these tests yielded a blood alcohol content (BAC) of 0.196.

Factors in Aggravation

RESPONDENT'S PRIOR DUI CONVICTION IN WEST VIRGINIA

4. On May 21, 2013, respondent pled guilty to violating West Virginia Code section 17C-5-2, subdivision (d), first offense DUI. (Magistrate Court of Kanawha County, West Virginia, Case Number 13-M20M-01152.) However, a judgment was not entered against respondent, and he was placed on probation. After respondent completed a drug and alcohol deferral program authorized by West Virginia Code section 17C-5-2b, the court dismissed the charges against respondent. On August 24, 2018, all records relating to respondent's West Virginia DUI case were expunged.

RESPONDENT'S PRIOR CITATION BY THE BOARD

5. On July 25, 2016, the Board issued Citation and Fine Number CI 2016 71151 (Citation) to respondent for violating California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A). Respondent was issued an administration fine of \$1,000 in connection with this Citation. Respondent has complied with the Citation and paid the related fines. The facts and circumstances surrounding this Citation are that on November 10, 2015, a Board inspector conducted an inspection of a CVS Pharmacy (CVS) and found that a pharmacy technician, who was under the supervision of respondent and another pharmacist at the time, gave a new prescription to a patient without offering a consultation.

Testimony of the Board Inspector

6. Board Inspector Brandon Mutrux testified at the hearing on behalf of complainant. Investigator Mutrux received his Doctor of Pharmacy degree from the University of California at San Diego. He has been a licensed pharmacist since 2008, and he has worked as an inspector for the Board since 2012. Inspector Mutrux explained that the duties of a pharmacist include filling prescriptions, consulting with patients about medication, and protecting patients from incorrect dosing. According to Inspector Mutrux, a pharmacist is the "gatekeeper" to the pharmacy who has unrestricted access to controlled substances and confidential patient information. Therefore, a pharmacist must exercise good judgment. In addition, a pharmacist with substance abuse issues can pose a danger to the public because practicing while under influence can harm or kill patients.

Respondent's Evidence

7. Respondent is 34 years old. He was born and raised in a rural community in Pennsylvania. He received his Bachelor of Arts degree in biology from Bucknell University in 2008 and his doctor of pharmacy degree from the University of Charleston in 2013. In June 2013, respondent moved to Los Angeles to work as a pharmacist at CVS. Respondent's job duties included being a retail pharmacist and assisting his supervisor in corporate assignments such as acquiring new pharmacies. Respondent worked for CVS for five years. From 2018 until the present, he has been a pharmacist with an online pharmacy, Alto Pharmacy (Alto).

8. Respondent recounted that as child, he was sexually abused by a cousin. Due to this trauma, he became withdrawn and developed self-defense mechanisms. Moreover, respondent is gay, and his family has experienced difficulty accepting his sexual orientation. Respondent recalled that on September 15, 2018, he had a conversation with his mother about the childhood sexual abuse he had endured. His mother did not wish to discuss the matter, which upset respondent. In his own words, respondent felt "anxious" and "hyper aroused" after this conversation. That same afternoon, he attended a pool party during which he drank several mixed drinks. According to respondent, he drank excessively that day because alcohol was his "coping mechanism" to suppress his feelings of anger and anxiety. Although respondent does not recall his subsequent arrest for DUI, he did not dispute any of the facts contained in the arrest report.

9. Respondent testified about his problems with alcohol consumption in a frank and forthright manner. He admitted that prior to September 15, 2018, he drank alcohol excessively on other occasions, and at times he drank until he blacked out. Respondent conceded that "for a while" (his words), he was an alcoholic. Respondent

also took responsibility for 2013 DUI conviction, which occurred after he drank some mixed drinks and drove while intoxicated.

10. Although respondent was ordered by the criminal court to attend only 26 sessions of therapy, he continues to engage in therapy on a voluntary basis. Respondent currently sees his therapist, Jennifer Adderly, every week for 50-minute sessions. He also sees a psychiatrist, Dr. Brandon Greenway on a monthly or bimonthly basis for one-hour sessions. Respondent averred that through therapy, he has learned to identify certain triggers and to process his feelings. Respondent stated that his family's denial of his sexual abuse and refusal to accept his sexual orientation are triggers for him to drink. However, rather than using alcohol as a coping mechanism, he has learned to write down his emotions and to take inventory of his feelings. Respondent also engages in breathing exercises and physical exercises to manage his stress.

11. Respondent has stopped drinking any mixed drinks or hard alcohol. He described his current drinking pattern as "social drinking", which consists of a glass or two of wine with dinner on rare occasions. Respondent has not completed any in-patient or out-patient drug and alcohol rehabilitation programs. Although he completed his court-ordered 52 sessions of AA, he does not currently attend any AA meetings.

12. On January 13, 2020, Lanikai Clouse, PhD, conducted an evaluation of respondent to assess his current level of functioning. Dr. Clouse found that "[Respondent] does not display any significant psychological disturbances that would impair his ability to practice as a Pharmacist." (Ex. H, p. 4.) Dr. Clouse recommended for respondent to continue to engage in proactive coping skills for stress management and to participate in individual therapy. (*Ibid.*)

13. With respect to 2015 Citation, respondent explained that he and another pharmacist were on duty at the CVS on the date of the Board inspection. A pharmacy technician, who was under respondent's supervision, gave a new prescription to a patient without offering a consultation. Through this experience, respondent has learned to build a stronger relationship with pharmacy technicians and to have conversations with them every morning to reiterate their job responsibilities. Respondent conceded that "things can slip through" without such daily interactions. Respondent currently works for Alto in their Culver City office, where he institutes this practice when he conducts consultations online.

14. Respondent also submitted a job evaluation dated March 2020 from Alto showing that he has earned excellent reviews from his managers. Specifically, one of respondent's manager wrote: "[Respondent] is such an asset on the PCP team at Alto. He comes into work ready to pump out prescriptions, focus, and do his very best consistently every single day. He personally makes sure patients have a great experience with Alto, that pharmacists are working efficiently, and that prescriptions are typed with precision and accuracy. I'm so thankful to have [respondent] on my team and can't wait to see how he develops more in the coming months." (Ex. I, p. 46.)

15. Although respondent understands the Board's concerns regarding his misuse of alcohol, he requested that any probationary terms do not include random bodily fluid testing and participation in AA. Respondent travels frequently, and he believes that random bodily fluid testing would hinder his travel plans. Respondent has participated in AA previously, but he has not found it to be helpful. Respondent has found individual therapy to be most beneficial to his recovery.

Character Evidence

16. Respondent submitted several letters and declarations from his friends, colleagues, and supervisors regarding his good character. All of the authors indicated that they were aware of respondent's criminal convictions, and they uniformly described respondent as responsible, honest, and diligent. Some of these letters and declarations are highlighted below.

17. In a declaration dated February 10, 2020, Nicole Ekemkji, respondent's manager at Alto, wrote, in relevant part, "[Respondent] is a hard-working, empathetic, and efficient pharmacist. He puts patients first and would not do anything to jeopardize patient safety. He is one of the strongest and smartest pharmacists I have on my team." (Ex. A, p. 6.)

18. In an undated letter, Sandra Aziz, Pharmacist-In-Charge at Alto, wrote, in relevant part:

As a pharmacist, we are the most accessible health care providers to patients and clinicians. We act as gatekeepers and quality assurance managers every second of the day. In combination with working in a fast growing start up, it really requires drive, commitment, a passion for wanting to improve a patient's access to healthcare, and the ability to drive change. [Respondent] has surpassed every expectation, I, myself had for him as his manager and him continuing to do so in his current role.

(Ex. E.)

19. In a declaration dated February 11, 2020, Brian Berninger, respondent's former employer at CVS, wrote, in relevant part:

I believe [respondent] is an extremely competent Pharmacist. [Respondent] worked in an extremely challenging environment in South Los Angeles and demonstrated compassion, professionalism and competence always. [Respondent] was an excellent employee and always willing to go above and beyond for his patients and his employer.

(Ex. B, p. 2.)

Cost Recovery

20. Complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 66.5 hours of legal services at rates ranging from \$120 to \$220 per hour for a subtotal of \$13,022.50; and a good faith estimate of 1.5 additional hours that will be incurred for the preparation of the case, up to and including the administrative hearing, at the rate of \$220 (subtotal \$330) for total costs claimed of \$13,352.50.

21. Respondent did not present any evidence regarding his income or expenses.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The standard of proof for the Board to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Law

2. Business and Professions Code section 4301, in pertinent part, provides:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . . [¶]

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

conduct with safety to the public the practice authorized by the license.

[¶] . . . [¶]

(/) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee.

Substantial Relationship

3. California Code of Regulations, title 16, section 1770 provides 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.”

4. Respondent’s DUI conviction is substantially related to the qualifications, functions, and duties of a pharmacist. Respondent’s DUI conviction evinced a serious lapse in judgment. As Investigator Mutrux’s testimony showed, sound judgment is an essential characteristic of a pharmacist because he has unrestricted access to confidential patient information and controlled substances. Furthermore, the consumption of alcohol by a pharmacist may impair his ability to provide medical care in a safe and effective manner. By driving under the influence of alcohol, respondent demonstrated a disregard for his own health and safety and that of the public at large. California courts have found that such misconduct is logically connected to potential fitness to practice as a healthcare provider. (See *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407; *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) Although respondent’s misuse of alcohol did not take place within the work setting,

the Board does not need to postpone the imposition of discipline until that personal problem affects respondent's professional practice. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 779.)

Causes for Discipline

5. Cause exists to suspend or revoke respondent's pharmacist license pursuant to Business and Professions Code section 4301, subdivision (h), in that he used alcohol in a manner dangerous or injurious to himself and others when he drove under the influence of alcohol. (Factual Finding 3.)

6. Cause exists to suspend or revoke respondent's pharmacist license pursuant to Business and Professions Code sections 490 and 4301, subdivision (f), in conjunction with California Code of Regulations, title 16, section 1770, in that respondent was convicted of a crime which is substantially related to the qualifications, functions, or duties of a pharmacist. (Factual Finding 3.)

Degree of Discipline

7. The Board's Disciplinary Guidelines (Rev. 2/2017) (Guidelines) describe categories of violations and recommended penalties. Under the Guidelines, the violations under consideration in this case constitute Category III level of discipline, in that respondent's criminal conviction involved alcohol. (Guidelines, p. 7.) The minimum recommended penalty is revocation stayed, 90 days of actual suspension, and three to five years of probation. The maximum recommended penalty is revocation. In cases involving the abusive use of alcohol and probation is ordered, the Guidelines recommend a five-year probationary term instead of the usual term of three years. (*Ibid.*) However, the Board recognizes that individual cases may necessitate a departure from the Guidelines.

8. The Guidelines specify that, in determining whether the minimum, maximum or an intermediate penalty is to be imposed in a given case, the following factors should be considered: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record; (4) prior warnings; (5) number and or variety of current violations; (6) the nature and severity of the act(s) or offense(s), or crime(s); (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 dismissal proceedings pursuant to section 1203.4 of the Penal Code; (13) the time that has elapsed since commission of the act(s) or offenses(s); (14) whether the conduct was intentional or negligent; (15) financial benefit to the respondent from the misconduct; (16) license history of other licenses held by respondent; and (17) Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards). (Guidelines, p. 3.)

9. Applying the criteria to the case at hand, respondent's DUI offense is a moderately serious crime. Even though respondent's conviction did not cause actual harm to any consumer, it had the potential to cause harm to consumers and the public at large. Respondent's crime also caused actual harm to the public, in that his DUI resulted in property damage. Additionally, respondent's arrest in 2018 and his conviction in 2019 are relatively recent. Due to his DUI conviction, respondent will remain on criminal probation until February 2021. He has complied with all court orders in his criminal case, but there is no evidence of any expungement proceedings pursuant to Penal Code section 1203.4. Respondent is being disciplined for a single DUI conviction, and his conduct did not involve professional negligence or incompetence. In mitigation, respondent drank as a coping mechanism as he struggled with issues of childhood sexual abuse and his family's acceptance of his

sexual orientation. In aggravation, however, respondent's BAC of 0.196 at the time of his arrest was very high; he was involved in a DUI in 2013 in West Virginia; and he was previously cited by the Board for failing to offer a consultation to a new patient.

10. Respondent did present some evidence of his rehabilitation. He has voluntarily engaged in individual therapy to deal with the issues that underlie his excessive drinking. Through therapy, he appears to have gained new insights into his behavior and learned to process his emotions in a healthful manner. Respondent spoke in a candid manner about his struggles with alcohol, and he was remorseful about his decision to drive after drinking alcohol. Under these circumstances, the recommended discipline of 90 days of suspension and five years' probation under the Guidelines is unduly harsh, and a deviation therefrom is appropriate. In order to protect the public health, safety and welfare, respondent's license should be placed on probation for four years under the terms and conditions set forth below.

11. Although respondent requested the exclusion of certain probationary terms relating substance abuse, all optional terms (with the exception of worksite monitor and prescription coordination) will be ordered in this matter. In light of the Guidelines' requirement to consider the Uniform Standards, such standards should be applied without deviation in this case. Respondent has sustained two DUI offenses on his criminal record; he has admitted to a history of excessive drinking to the point of blacking out; and he has admitted to being an alcoholic at a certain point in his life. Nevertheless, respondent has not completed any alcohol rehabilitation program; he does not attend AA or any comparable program; and he continues to drink alcohol, albeit on a social basis. Respondent's DUI arrest and conviction are recent, and his BAC was high at the time of his arrest. Considering these factors, the Board cannot be reassured of respondent's ability to practice safely without probationary terms relating

to substance abuse. Provisions regarding work site monitor and prescription coordination, however, will not be ordered because there was no evidence that respondent's misuse of alcohol affected his practice or that he misused any prescription drugs.

Cost Recovery

12. In order to recover costs under that statute, "[a] certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative, must be submitted as prima facie evidence of reasonable costs of investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3, subd. (c).) Of the \$13,352.50 in total costs claimed, \$330 of the charges is Ms. Njim's estimate of additional hours that will be incurred for the preparation of the case up to and including the administrative hearing. This good faith estimate of anticipated costs is not sufficient to constitute prima facie evidence of reasonable costs of prosecution in this case because actual costs for the preparation of the case up to and including the administrative hearing are available, and Ms. Njim could have submitted a declaration at the end of the hearing. Therefore, \$330 will be deducted from the total costs claimed, resulting in a subtotal of \$13,022.50.

13. Additionally, in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has

used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Id.* at p. 45.)

14. In this case, complainant has assessed a disproportionately large amount in prosecution costs, given that complainant presented only documentary evidence and one witness's testimony at the hearing. These circumstances warrant an additional 50 percent reduction in actual costs. Therefore, the reasonable costs of investigation and enforcement are \$6,511.25.

ORDER

Pharmacist License Number RPH 70160 issued to respondent Dwight Lee Kieffer is revoked; however, the order of revocation is stayed and respondent is placed on probation for four years upon the following terms and conditions:

1. **Obey All Laws:** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. **Report to the Board:** Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. **Interview with the Board.** Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to

appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff.** Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. **Continuing Education.** Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

6. **Reporting of Employment and Notice to Employers.** During the period of probation, respondent shall notify all present and prospective employers of this decision in case number 2019110699 and the terms, conditions and restrictions imposed on respondent by this decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment.

Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the Board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

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 (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 2019110699, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the Board in writing within fifteen (15) days of the change acknowledging that he or she has read this decision and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of this decision in case number 2019110699 and the terms and conditions imposed thereby in advance of respondent commencing work at such

licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read this decision, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

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

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

7. Notification of Change(s) in Name, Address(es), or Phone Number(s). Respondent shall further notify the Board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

8. Restrictions on Supervision and Oversight of Licensed Facilities. During the period of probation, respondent shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent may be a

pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any single entity licensed by the Board, but only if respondent or that entity retains, at his or its expense, an independent consultant who shall be responsible for reviewing the operations of the entity on a quarterly basis for compliance by respondent and the entity with state and federal laws and regulations governing the practice of the entity, and compliance by respondent with the obligations of his supervisory position. Respondent may serve in such a position at only one entity licensed by the Board, only upon approval by the Board or its designee. Any such approval shall be site specific. The consultant shall be a pharmacist licensed by and not on probation with the Board, who has been approved by the Board or its designee to serve in this position. Respondent shall submit the name of the proposed consultant to the Board or its designee for approval within thirty (30) days of the effective date of the decision or prior to assumption of duties allowed in this term. Assumption of any unauthorized supervision responsibilities shall be considered a violation of probation. In addition, failure to timely seek approval for, timely retain, or ensure timely reporting by the consultant shall be considered a violation of probation.

9. **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 \$6,511.25. Respondent shall be permitted to pay these costs in a payment plan approved by the Board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

There shall be no deviation from the installment payment schedule set forth by the Board absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

10. **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.

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

If respondent's pharmacist 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.

12. **License Surrender While on Probation/Suspension.** Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the Board, along with a request to surrender the license. The Board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the Board within ten (10) days of notification by the Board that the surrender is accepted if not already provided. Respondent may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

13. **Notification of a Change in Employment.** Respondent shall notify the Board in writing within 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.

Failure to timely notify the Board of any change in employer(s) shall be considered a violation of probation.

14. **Practice Requirement—Extension of Probation.** Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

If respondent does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the Board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and

hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the Board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The Board or its designee may post a notice of the extended probation period on its website.

15. **Psychotherapy.** Within thirty (30) days of the effective date of this decision, respondent shall submit to the Board or its designee, for prior approval, the name and qualifications of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the Board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of respondent's choice to the Board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the Board, and the Board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the Board or its designee may require respondent to undergo, at respondent's own expense, a mental health evaluation by a Board-appointed or Board-approved psychiatrist or psychologist. If the approved evaluator recommends that respondent continue psychotherapy, the Board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the Board. Respondent shall provide the therapist with a copy of the Board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the Board concerning respondent's fitness to practice, progress in treatment, and such other information required by the Board or its designee.

If at any time the treating therapist determines that respondent cannot practice safely or independently, the therapist shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board that practice may be resumed.

During any suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider,

veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

During any suspension, respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances. Respondent shall not resume practice until notified by the Board.

During any suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances. Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

16. **Pharmacists Recovery Program (PRP).** By no later than ten (10) days after the effective date of this decision, respondent shall have completed all of the following: contacted the Pharmacists Recovery Program (PRP) for evaluation; enrolled in the PRP; completed, signed, and returned the treatment contract as well as any addendums required or suggested by the PRP; successfully completed registration for any drug or alcohol testing mandated by the treatment contract and/or by enrollment in the PRP; and begun compliance with the drug or alcohol testing protocol(s). Respondent shall successfully participate in the PRP and complete the treatment

contract and any addendums required or suggested by the PRP. The costs for PRP participation shall be borne by the respondent.

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

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

Any of the following shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation:

- Failure to contact, complete enrollment, and execute and return the treatment contract with the PRP, including any addendum(s), within ten (10) days of the effective date of the decision as directed by the PRP;
- Failure to complete registration for any drug or alcohol testing mandated by the treatment contract and/or by the PRP, and begin compliance with the testing protocol(s), within ten (10) days of the effective date of the decision as directed by the PRP;
- Failure to comply with testing protocols regarding daily check-in and/or failure to complete a mandated test as directed by the PRP;

- Any report from the PRP of material non-compliance with the terms and conditions of the treatment contract and/or any addendum(s); or
- Termination by the PRP for non-compliance, failure to derive benefit, or as a public risk.

Respondent may not resume the practice of pharmacy until notified by the Board in writing.

Probation shall be automatically extended until respondent successfully completes the PRP. The Board will provide notice of any such suspension or extension of probation.

During any suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained. Respondent shall not practice as a pharmacist nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During any suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

17. **Drug and Alcohol Testing.** Respondent, at his own expense, shall participate in testing as directed by the Board or its designee for the detection of alcohol, controlled substances, and dangerous drugs and/or dangerous devices. Testing protocols may include biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other testing protocols as directed by the Board or its designee. All testing must be pursuant to an observed testing protocol, unless respondent is informed otherwise in writing by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the Board or its designee.

By no later than thirty (30) days after the effective date of this decision, respondent shall have completed all of the following tasks: enrolled and registered with an approved drug and alcohol testing vendor; provided that vendor with any documentation, and any information necessary for payment by respondent; commenced testing protocols, including all required contacts with the testing vendor to determine testing date(s); and begun testing. At all times, respondent shall fully cooperate with the testing vendor, and with the Board or its designee, with regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to cooperate timely shall be considered a violation of probation.

Respondent may be required to test on any day, including weekends and holidays. Respondent is required to make daily contact with the testing vendor to determine if a test is required, and if a test is required must submit to testing on the same day.

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, respondent shall seek and receive approval from the Board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, respondent shall enroll and register with the approved alternate drug testing vendor, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by respondent. During the period of absence of the area, respondent shall commence testing protocols with the alternate vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the Board or its designee, or to timely enroll and register with, timely commence testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

Upon detection of an illicit drug, controlled substance or dangerous drug, the Board or its designee may require respondent to timely provide documentation from a licensed practitioner authorized to prescribe the detected substance demonstrating that the substance was administered or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such documentation shall be provided by respondent within ten (10) days of being requested.

Any of the following shall be considered a violation of probation and shall result in respondent being immediately suspended from practice as a pharmacist until notified by the Board in writing that he may resume practice: failure to timely complete all of the steps required for enrollment/registration with the drug testing vendor, including making arrangements for payment; failure to timely commence drug testing protocols; failure to contact the drug testing vendor as required to determine testing date(s); failure to test as required; failure to timely supply documentation

demonstrating that a detected substance was taken pursuant to a legitimate prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, the Board or its designee shall inform respondent of the suspension and inform him to immediately leave work, and shall notify respondent's employer(s) and work site monitor(s) of the suspension.

During any such suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances.

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy, or of the

manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices.

Failure to comply with any such suspension shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this term 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.** Respondent shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a necessary part of treatment. Respondent shall ensure that he 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, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

20. **Facilitated Group Recovery and/or Support Meetings.** Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a group recovery and/or support meeting that is run by a trained

facilitator approved in advance by the Board or its designee. The required frequency of group meeting attendance shall be determined by the Board or its designee.

Respondent shall continue regular attendance as directed at an approved facilitated group meeting until the Board or its designee advises the respondent in writing that he may cease regular attendance. Respondent shall provide signed and dated documentation of attendance as required with each quarterly report. Failure to attend as required or to submit documentation of attendance shall be considered a violation of probation.

If respondent is required to participate in the PRP, compliance with this term can be demonstrated through that program. Where respondent is enrolled in the PRP, participation as required in a facilitated group meeting approved by the PRP shall be sufficient for satisfaction of this requirement. Any deviation from participation requirements for the PRP-approved group shall be considered a violation of probation.

21. 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 the number of group meetings per week or month directed by the Board or its designee, which shall typically be at least one per week. 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.

Where respondent is enrolled in the PRP, participation as required in a recovery group meeting approved by the PRP shall be sufficient for satisfaction of this

requirement. Any deviation from participation requirements for the PRP-approved group shall be considered a violation of probation.

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

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

23. **Completion of Probation.** Upon written notice by the Board or its designee indicating successful completion of probation, respondent's license will be fully restored.

DATE: 11/20/2020

Ji-Lan Zang

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

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8
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. 6702

13 **DWIGHT LEE KIEFFER**
1111 Wilshire Blvd., Apt. 310
14 Los Angeles, CA 90017

OAH No. 2019110699

FIRST AMENDED ACCUSATION

15 Pharmacist License No. RPH 70160

16 Respondent.

17 **PARTIES**

18 1. Anne Sodergren (Complainant) brings this First Amended Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of
20 Consumer Affairs.

21 2. On or about November 8, 2013, the Board of Pharmacy (Board) issued Pharmacist
22 License Number RPH 70160 to Dwight Lee Kieffer (Respondent). The Pharmacist License was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 January 31, 2021, unless renewed.

25 **JURISDICTION**

26 3. This First Amended Accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

1 4. Section 4300 of the Code provides, in pertinent part, that every license issued by the
2 board is subject to discipline, including suspension or revocation.

3 5. Section 4300.1 of the Code states:

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

10 STATUTORY PROVISIONS

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

15 7. Section 4301 of the Code states:

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

19

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

25

26 (i) The conviction of a crime substantially related to the qualifications,
27 functions, and duties of a licensee under this chapter. The record of conviction of a
28 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

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

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

9. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(February 15, 2019 Criminal Conviction-DUI on September 15, 2018)

10. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered pharmacist. Specifically, on February 15, 2019, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol] in the criminal proceeding entitled *The People of the State of California v. Dwight Kieffer* (Super. Ct. L.A. County, 2019, No. 8VV03993). The court placed Respondent on 36 months of probation with terms and conditions and ordered him to pay fines and restitution. The circumstances surrounding the conviction are that on or about September 15, 2018, officers responded to a hit and run traffic collision located at Satsuma/Whipple. Upon arrival, officers

1 observed Respondent's vehicle parked with major T/C damage to the front right of the vehicle
2 (White BMW X5 SUV). Respondent was observed to have objective symptoms of alcohol
3 intoxication, including slurred speech, and the odor of alcoholic beverages emitting from his
4 breath. Respondent failed field sobriety tests. A breath test was administered to Respondent and
5 showed that his blood alcohol concentration level measured 0.196%.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of Alcohol)**

8 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
9 that Respondent used alcoholic beverages to an extent or in a manner as to be dangerous or
10 injurious to himself, another person or to the public. Complainant refers to, and by this reference
11 incorporates, the allegations set forth above in paragraph 10, as though set forth fully.

12 **DISCIPLINARY CONSIDERATIONS**

13 12. In order to determine the degree of discipline, if any to be imposed on Respondent,
14 Complainant alleges the following:

- 15 a. On or about July 25, 2016, the Board issued Citation and Fine No. CI 2016 71151 to
16 Respondent for violating California Code of Regulations, title 16, section 1707.2,
17 subdivision (b)(1)(A), resulting in the issuance of a \$1,000.00 fine. Respondent has
18 complied with the Citation. Specifically, on November 10, 2015, an inspection of
19 CVS Pharmacy #8892 (PHY 48123) located at 5822 S. Vermont Ave., Los Angeles,
20 CA 90044, revealed technician Milagros Lopez (TCH 81572) handed out a new
21 prescription for cyclobenzaprine 10mg RX#1554128 to WK and did not offer
22 consultation resulting in WK leaving the pharmacy without receiving consultation
23 from Katherine Collier (RPH 41593) or Respondent (RPH 70160) who were the
24 pharmacists on duty.
- 25 b. On or about February 9, 2013, Respondent was arrested for a first offense of driving
26 under the influence. In the criminal proceeding entitled *State of West Virginia v.*
27 *Dwight Kieffer* (Magistrate Court of Kanawha County, West Virginia, Case No. 13-
28 M20M-01152), Respondent was charged with one count of violating West Virginia

Code section 17C-5-2, subdivision (d) [First Offense Driving Under the Influence of Alcohol]. Thereafter, Respondent informed the court that he desired to participate in the deferral program authorized by West Virginia Code section 17C-5-2b. On or about May 21, 2013, Respondent entered a plea of guilty or was found guilty of the offense charged; however a judgment of guilt was not entered against Respondent, and he was placed on probation. After Respondent met the requirements set forth in West Virginia Code section 17C-5-2b, the court dismissed the charge against Respondent. On or about August 24, 2018, the court granted a motion for expungement of the offense.

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 Pharmacist License Number RPH 70160, issued to Dwight Lee Kieffer;
2. Ordering Dwight Lee Kieffer 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: December 12, 2019



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