

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

In the Matter of the Statement of Issues Against:

BRIAN LEE PURCELL, Respondent

Pharmacy Technician Registration Applicant

Agency Case No. 6829

OAH No. 2019120945

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 27, 2020.

It is so ORDERED on April 27, 2020.

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.

By

Greg Lippe
Board President

**BEFORE THE
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BRIAN LEE PURCELL, Respondent

Case No. 6829

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PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 21, 2020, in San Diego, California.

Neda Shahrestani, Certified Law Student,¹ under the supervision of Lauro A. Paredes, Deputy Attorney General, Department of Justice, State of California, represented complainant, Anne Sodergren, Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs, State of California.

¹ Ms. Shahrestani is certified by the State Bar of California pursuant to the Rules Governing the Practical Training of Law Students. Mr. Paredes submitted documentation regarding her certification and complainant's consent to have Ms. Shahrestani appear on complainant's behalf.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 21, 2020.

FACTUAL FINDINGS

Jurisdiction

1. On May 6, 2019, Mr. Purcell, submitted an application for registration as a pharmacy technician.

2. On September 17, 2019, the board advised Mr. Purcell that his application for registration was being denied. Mr. Purcell appealed and requested a hearing.

3. On December 3, 2019, complainant signed the Statement of Issues in her official capacity. The statement of issues alleged that Mr. Purcell had been convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician and had committed an act involving moral turpitude, which provided grounds to deny Mr. Purcell's application.

Mr. Purcell timely filed a notice of defense and this hearing followed.

The Board's Investigation

4. Noelle Randall, Pharm.D., has been an inspector for the board for about five years. She completed her Doctor of Pharmacy at the University of Iowa in 2008 and was licensed as a pharmacist in California in 2009. She worked at a national chain pharmacy as a staff pharmacist and then as a pharmacist in charge (PIC) prior to

becoming an investigator for the board. Dr. Randall conducted an investigation and provided testimony at the hearing which is summarized as follows:

The duties of a pharmacy technician (pharmacy tech) include handling controlled substances, removing drugs from the shelf and packaging prescriptions, and compounding medications, such as making an intravenous bag in a hospital setting, if required. In "real life" the pharmacy tech also greets customers, receives prescriptions, accesses confidential information in patient's record and insurance information, and then physically fills the prescription. Pharmacy technicians are directly supervised by a registered pharmacist. While the pharmacist works with and is generally aware of the pharmacy tech's activities, the pharmacist does not check all the work or review each prescription that the pharmacy tech fills. A pharmacy tech must possess the characteristics of honesty and integrity, and are trusted to exercise good judgment and adhere to statutes and regulations regulating pharmacy operations.

Respondent's Evidence

6. Respondent had always wanted to work in the medical field and joined the navy in April 2013 to help pay for his training. He was originally stationed at Naval Base Coronado. His first deployment was aboard the USS Peleliu where he spent three months in the Philippines. In September 2014, while in the Philippines, respondent and a group of sailors went to a spa for massages, began drinking, went to a mall and continued drinking, and returned to the ship at sunset. Respondent described the berthing space aboard ship as rows of bunks with about 20 sailors sleeping in one room. He had a bottom bunk and the individual he was accused of assaulting had a bottom bunk on "the other side of the room." Respondent first remembers "a light in my face and being asked if I was okay." He recalls that he then went back to bed. Respondent does not remember any more about the incident.

He was later awakened and required to report to his senior chief. Respondent was then separated from and not allowed to see other sailors, and he worked in the ship's laundry for about one month, until Naval Criminal Investigative Service (NCIS) was able to board the ship. NCIS officers told respondent that two shipmates observed him "near a guy's crotch area." Per the Navy's charge sheet, respondent was charged with pulling down the underwear of a fellow sailor and touching the sailor's exposed penis with his forehead without the sailor's consent; and he was charged with doing the above when he knew or reasonably should have known that the sailor was asleep.

On August 4, 2015, in a special court-martial, on his plea of guilty, respondent was convicted of violating 10 U.S.C.A., section 928, article 128, subdivision (a) assault, and (b) aggravated assault,² and was confined to the ship's brig (prison) for three

² 10 U.S.C.A. section 928, subdivisions (a) and (b) provides:

(a) Assault.--Any person subject to this chapter who,
unlawfully and with force or violence--

(1) attempts to do bodily harm to another person;

(2) offers to do bodily harm to another person; or

(3) does bodily harm to another person;

is guilty of assault and shall be punished as a court-martial
may direct.

(b) Aggravated assault.--Any person subject to this chapter

months. On May 5, 2016, he was dishonorably discharged from the military for bad conduct. Respondent's highest rank with the navy had been E-3, and as a result of his conviction he was reduced in rank to an E-1. His reenlistment code is RE-4, which means that he is not eligible to reenlist unless this code is upgraded.

In December 2018, respondent enrolled in the Pharmacy Technician Program at PIMA Medical Institute (PIMA), and completed the program in July 2019. While a student at PIMA, he volunteered teaching math and science in an adult literacy program. Respondent applied for his pharmacy technician registration in May 2019. Upon completing classes at PIMA, he studied for his designation as a Certified Pharmacy Technician, and received his certification in October 2019. He has been working as a pharmacy clerk at a local pharmacy since December 2019. In this position he is able to assist customers and to view their records and other information on the computer, and, after a registered pharmacist visually checks his work, respondent is able to put medications into a bag. The only task he is not able to complete as a

(1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon;

(2) who, in committing an assault, inflicts substantial bodily harm or grievous bodily harm on another person; or

(3) who commits an assault by strangulation or suffocation;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

pharmacy clerk, as opposed to a being a pharmacy technician, is to actually fill a prescription.

Respondent stated that he does not recall what happened that evening in the Philippines, but that he has "resolved" the incident and will never do this again. He admitted that he has had other occasions in the past where, after he was "stressed" and drinking, he did not remember doing something. He said, "I would be a great tech" if given the chance. He has gained the trust of the pharmacists and co-workers in his current position, and he enjoys and is good at his work. Respondent paid \$15,000 to attend PIMA for his pharmacy technician training as he thought he would be a good pharmacy technician.

Respondent has been married for six years. His husband was present during the hearing and is supportive of respondent obtaining his pharmacy technician license. Respondent currently volunteers in community relations for San Diego Pool League (League), a group of billiards players, and previously served for one year as secretary of the League. A letter from the League's current secretary confirmed respondent's volunteer work. Respondent stated that all his volunteer work has been done on his own, and he was not required to volunteer as a result of his convictions.

Respondent provided the following character letters³ and documents:

³ Three character letters which were submitted by respondent and received into evidence contained the author's typewritten name only with no signature. Complainant stipulated that these letters were deemed to be true and correct without the author's actual signature.

- Kevin Hewitt has known respondent for eight years, and wrote that while he has witnessed respondent's "ups and downs," respondent remains a decent person with a good moral character, and he added, "[respondent] just needs more people to believe in him."
- A pharmacy technician who worked with respondent during respondent's externship at a local pharmacy described him as professional, possessing integrity and a positive attitude; "always mindful of patient's privacy"; eager to learn and sharpen his skills; and an "asset to the pharmacy." Respondent stated that the author was aware of respondent's "circumstances."
- The Pharmacy Technician Program Director (director) for PIMA wrote that he knew respondent for seven months as a student at PIMA. Respondent maintained good attendance and an outstanding grade point average (GPA), and the director described him as a take-charge person, with leadership ability and a positive attitude. Respondent stated that the director was aware of respondent's bad conduct discharge from the military but was not aware of "all the details."
- Evaluation records from two externships completed by respondent, including 120 hours at a local pharmacy dated August 16, 2019, and 120 hours at a compounding pharmacy, dated September 11, 2019, reflected that respondent took direction and criticism, had a good attitude, maintained perfect attendance, and earned a grade of "A."
- Respondent's transcript from PIMA confirmed his excellent attendance and high GPA; certificates from PIMA reflected various academic honors from February 8, 2019, through July 26, 2019; a certificate dated July 30, 2019, documented completion of a Sterile Products Certification Course; and a certificate from

Pharmacy Technician Certification Board dated October 14, 2019, confirmed his designation as a Certified Pharmacy Technician (CPhT).

LEGAL CONCLUSIONS

1. "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code § 4001.1.)

2. Respondent has the burden of proving by a preponderance of the evidence that he is fit for the license he seeks and that his license application should be granted. (Evid. Code §115.)

Statutory Authority

3. Business and Professions Code section 480 provides in part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty . . .

[¶] . . . [¶]

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.

[¶] . . . [¶]

4. Business and Professions Code section 482, subdivisions (a) and (b) provide criteria for evaluation of rehabilitation as follows:

(a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(1) Considering the denial of a license by the board under Section 480; or

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

5. Business and Professions Code section 493 provides in part:

(a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license . . . upon the ground that the applicant or the licensee has been

convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(b) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

6. A license may be suspended or revoked for unprofessional conduct, which includes the commission of any act involving moral turpitude, or the conviction of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. (Bus & Prof. Code §4301, subds. (f) & (l).) Finally, the board may deny a license application if the applicant is guilty of unprofessional conduct. (§ 4300, subd. (c).)

Regulatory Authority

7. California Code of Regulations, title 16, section 1768 provides:

(a) Where the board has denied an application for a license, the earliest date on which the applicant may reapply for a license is one year after the effective date of the denial.

(b) All competent evidence of rehabilitation presented will be considered upon a reapplication. The board shall use the criteria listed in section 1769 when considering evidence of rehabilitation.

8. California Code of Regulations, title 16, section 1769, subdivision (b) provides the following criteria for rehabilitation:

(b) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

Substantial Relationship

9. In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, the appellate court noted:

Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question.

10. California Code of Regulations, title 16, section 1770, provides in part:

For the purpose of denial . . . of a personal . . . license . . . 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.

Cause Exists to Deny Respondent's Application for Registration

11. Cause was established under Business and Professions Code section 480, subdivisions (a)(1), (a)(3)(A), and (a)(3)(B)⁴ to deny respondent's application in that he

⁴Complainant only cited to Business and Professions Code section 480, subdivision (a)(1) and (a)(3)(A), but it is presumed that complainant also meant subdivision (a)(3)(B), which references substantial relationship as that phrase is

was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician, and would be a cause for discipline of a pharmacy technician registration under Business and Professions Code section 4301, subdivision (l).

12. Cause was established under Business and Professions Code section 480, subdivision (a)(3)(A) to deny respondent's application in that he was convicted of committing an act involving moral turpitude, and such conduct would be a cause for discipline of a pharmacy technician registration under Business and Professions Code section 4301, subdivision (f).

Evaluation

13. Cause exists to deny respondent's application for a pharmacy technician registration. His convictions reflected poor judgment and lack of good moral character. However, respondent has demonstrated significant and sustained rehabilitation. Respondent's convictions arose from an incident that occurred over five years ago, for which he has no memory given the events surrounding the incident, and resulted in his dishonorable discharge from the Navy. Respondent has incurred no further arrests or convictions since that time.

14. After his discharge from the navy, respondent enrolled in and successfully completed training as a pharmacy technician, completed two externships, and obtained designation as a Certified Pharmacy Technician. Respondent is currently employed as a pharmacy clerk. He has put his prior conduct behind him and provided

referenced in the First Cause for Denial at paragraph 12, and the entire code section is provided at paragraph 5.

letters of support from a co-worker at one of his externships and the director of PIMA. Respondent's actions are consistent with those of a person who has put his past behind him and made progress towards rehabilitation.

15. The evidentiary significance of an individual's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*In Re Gossage* (2000) 23 Cal.4th 1080, 1098; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) One of the most crucial indicators of rehabilitation is sustained good conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) By this yardstick, respondent has demonstrated rehabilitation.

16. Rehabilitation is also a state of mind. The law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent has been forthcoming about his convictions and the effect his misconduct has had on his life.

17. The primary purpose of the board is to protect the public. (Bus. & Prof. Code, § 4001.1.) "Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." *Id.* A period of probation with appropriate terms and conditions will enable the board to meet its responsibility to protect the public and ensure, through its oversight, that respondent's rehabilitation continues once he begins to practice as a pharmacy technician.

18. The board's Disciplinary Guidelines (the guidelines) were created, in part, to provide public protection. Imposing requirements upon respondent beyond that

required to protect the public would be punitive and impermissible. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) Respondent has demonstrated good conduct over the past five years and has provided sufficient rehabilitation evidence to demonstrate that an outright denial of his pharmacy technician registration would be impermissibly punitive in nature and beyond that required to protect the public.

19. The evidence established that respondent can be an asset to the profession, and the public will benefit from his service. The standard probation conditions should be sufficient to ensure that the public is protected.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a pharmacy technician registration, such registration shall be issued to respondent, Brian Lee Purcell, and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

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

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's registration or which is related to the practice of pharmacy technician 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 or her probation. Failure to cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers in California of the decision in case number 6829 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment in California, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6829, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the

decision in case number 6829 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment in California by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 6829 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective California 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, or relief as a pharmacy technician or any position for which a pharmacy technician registration is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. 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.

7. 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.

8. Status of Registration

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

If respondent's registration 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 registration shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation

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

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

10. Certification Prior to Resuming Work

Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the board within ten (10) days of receipt. Failure to maintain active, current certification or to timely submit proof of same shall be considered a violation of probation.

11. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 130 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 pharmacy technician 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 pharmacy technician 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.

12. 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.

13. Completion of Probation

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

DATE: March 23, 2020

DocuSigned by:
Marion Vomhof
383DFD82F8954A4...
MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings

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

13 In the Matter of the Statement of Issues
Against:

Case No. 6829

14 **BRIAN LEE PURCELL**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about May 9, 2019, the Board of Pharmacy (Board), Department of Consumer
24 Affairs received an application for a Pharmacy Technician Registration from Brian Lee Purcell
25 (Respondent). On or about May 6, 2019, Brian Lee Purcell certified under penalty of perjury to
26 the truthfulness of all statements, answers, and representations in the application. The Board
27 denied the application on September 17, 2019.

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4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

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1 (d) A board may deny a license regulated by this code on the ground that the
2 applicant knowingly made a false statement of fact that is required to be revealed in the
application for the license.

3 (e) This section shall become inoperative on July 1, 2020, and, as of January 1,
4 2021, is repealed.

5 6. Section 482 of the Code states:

6 (a) Each board under the provisions of this code shall develop criteria to evaluate
7 the rehabilitation of a person when:

8 (1) Considering the denial of a license by the board under Section 480; or

9 (2) Considering suspension or revocation of a license under Section 490.

10 (b) Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

11 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
12 2021, is repealed.

13 7. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
16 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
17 licensee in question, the record of conviction of the crime shall be conclusive evidence
of the fact that the conviction occurred, but only of that fact, and the board may inquire
18 into the circumstances surrounding the commission of the crime in order to fix the
degree of discipline or to determine if the conviction is substantially related to the
19 qualifications, functions, and duties of the licensee in question.

20 As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

21 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
22 2021, is repealed.

23 8. Section 4301 of the Code states:

24 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
25 conduct shall include, but is not limited to, any of the following:

26 . . .

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
deceit, or corruption, whether the act is committed in the course of relations as a
28 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

1 . . .

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

20

21 **REGULATORY PROVISIONS**

22 9. California Code of Regulations, title 16, section 1768 states:

23 (a) Where the board has denied an application for a license, the earliest date on
24 which the applicant may reapply for a license is one year after the effective date of the
25 denial.

26 (b) All competent evidence of rehabilitation presented will be considered upon a
27 reapplication. The board shall use the criteria listed in section 1769 when considering
28 evidence of rehabilitation.

29 10. California Code of Regulations, title 16, section 1769 states:

30 (a) When considering the denial of a facility or personal license under Section
31 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
32 of the applicant and his present eligibility for licensing or registration, will consider
33 the following criteria:

34 (1) The nature and severity of the act(s) or offense(s) under consideration
35 as grounds for denial.

36 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
37 under consideration as grounds for denial under Section 480 of the Business and
38 Professions Code.

39 (3) The time that has elapsed since commission of the act(s) or crime(s)
40 referred to in subdivision (1) or (2).

41 (4) Whether the applicant has complied with any terms of parole,
42 probation, restitution or any other sanctions lawfully imposed against the applicant.

1 (5) Evidence, if any, of rehabilitation submitted by the applicant.

2

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

4 For the purpose of denial, suspension, or revocation of a personal or facility
5 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
6 Professions Code, a crime or act shall be considered substantially related to the
7 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.

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(August 4, 2015 Criminal Conviction for Assault)**

10 12. Respondent's application for registration as a pharmacy technician is subject to denial
11 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that Respondent was
12 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
13 pharmacy technician, and would be a cause for discipline under section 4301, subdivision (l) for a
14 registered pharmacy technician. The circumstances are as follows:

15 a. On or about August 4, 2015, in a special court martial entitled *United States v.*
16 *ATAN Brian L. Purcell*, convened at the Western Judicial Circuit Courthouse, Naval Base San
17 Diego, Convening Order No. 01-15, Respondent was convicted on his plea of guilty to violating
18 Uniform Code of Military Justice, Article 128, Assault Consummated by a Battery. As a result of
19 the conviction, Respondent was confined for 75 days, reduced in rank to an E-1, and he received
20 a bad conduct discharge from the United States Navy.

21 b. The circumstances that led to the conviction are that on or about September 30,
22 2014, while serving on board the U.S.S. Peliliu, Respondent pulled down the underwear of a
23 sleeping petty officer, and touched his forehead to the petty officer's exposed penis without his
24 consent.

25 **SECOND CAUSE FOR DENIAL OF APPLICATION**

26 **(Commission of Act Involving Moral Turpitude)**

27 13. Respondent's application for registration as a pharmacy technician is subject to denial
28 under section 480, subdivision (a)(3)(A) of the Code in that Respondent committed an act

1 involving moral turpitude, as described in paragraph 12, above, which is incorporated herein by
2 reference. Such conduct would be a cause for discipline under section 4301, subdivision (f) for a
3 registered pharmacy technician.

4 **PRAYER**

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

- 7 1. Denying the application of Brian Lee Purcell for a Pharmacy Technician Registration;
8 2. Taking such other and further action as deemed necessary and proper.

9
10 DATED: December 3, 2019



11 ANNE SODERGREN
12 Interim Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 *Complainant*