

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

In the Matter of the Statement of Issues Against:

**NICOLE LEE PATTON, aka NICOLE DENDY,
aka NICOLE TORRES, Respondent**

Agency Case No. 6892

OAH No. 2020030378

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 4, 2021.

It is so ORDERED on January 5, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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aka NICOLE TORRES, Respondent

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PROPOSED DECISION

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter remotely on October 6, 2020.

Michael M. Karimi, Deputy Attorney General, represented complainant Anne Sodergren, the Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs.

Respondent Nicole Lee Patton, also known as Nicole Dendy, also known as Nicole Torres, was self-represented.

Testimony and documents were received in evidence. The record was closed, and the matter was submitted for decision on October 6, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed Statement of Issues, Case No. 6892, in her official capacity as Executive Officer of the board dated February 26, 2020.

2. On May 20, 2019, the board received an application for pharmacy technician from respondent. On May 15, 2019, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application.

On November 18, 2019, the board denied her application "pursuant to but not limited to, Sections 480 (a)(1) and 480 (a)(3)(A) of the Business and Professions Code. This denial is based on your criminal history."¹

Convictions

3. On March 29, 2016, in the Superior Court of California, County of Orange, in *People of the State of California v. Nicole Lee Patton*, Case No. 16HM02113, on her plea of guilty, respondent was convicted of violating Vehicle Code section 23152,

¹ The language of Business and Professions Code section 480 was different when the board denied respondent's application and when complainant filed the Statement of Issues. Section 480 of the Business and Professions Code and certain other statutes relevant to this proceeding became inoperable on July 1, 2020. In this case, the ALJ relied on the new version of any inoperable statutes.

subdivision (a), driving under the influence of alcohol, a misdemeanor, and her admission of an enhancement under Vehicle Code section 23578.

The Court placed respondent on summary probation for three years; and among other things, ordered respondent to: (1) complete 80 hours of community service, and (2) complete a six-month First Offender Alcohol Program.

The facts and circumstances underlying the conviction occurred on January 31, 2016, when respondent drove her vehicle off the roadway and over an adjacent raised curb, damaging the tires and rims on the right side of her vehicle. Respondent left her vehicle at the scene of the accident. Orange County sheriff's deputies responded to the scene of the accident. A bystander described respondent and what she was wearing to a sheriff's deputy who located respondent and returned her to the scene of the collision. After she returned, among other things, she admitted she drove her vehicle after drinking two beers. Also, she explained how her vehicle ended up off the roadway. In the presence of the investigating sheriff's deputies, respondent displayed objective signs of alcohol intoxication (i.e., her eyes looked watery and bloodshot, and she had the odor of an alcoholic beverage coming from her). The sheriff's deputies transported respondent to "RSM city hall" where field sobriety tests were administered, where it was safer and out of the rain.

Based on (1) respondent's objective symptoms of alcohol intoxication, (2) the results of the field sobriety test, (3) the unsafe driving demonstrated by the traffic collision she was involved in, the sheriff's deputy formed the opinion respondent was driving while under the influence of alcohol and unable to drive safely. Samples of respondent's breath following her arrest revealed she had a blood alcohol content (BAC) of .15 percent.

4. On November 22, 2017, in the Superior Court of California, County of Orange, in *People of the State of California v. Nicole Patton*, Case No. 17HM10721 M A, on her plea of guilty, respondent was convicted of violating Health and Safety Code section 11364, subdivision (a), possession of drug paraphernalia, a misdemeanor.

The Court ordered respondent to serve 30 days in Orange County Jail.

The facts and circumstances underlying the conviction occurred on September 18, 2017, when an Orange County sheriff's deputy found respondent to be carrying a clear glass pipe in her front pocket, commonly used to smoke methamphetamine. The pipe contained burn marks and white crystalline residue consistent with methamphetamine. A second methamphetamine pipe was in respondent's bag.

5. On November 22, 2017, in the Superior Court of California, County of Orange, in *People of the State of California v. Nicole Lee Patton*, Case No. 17HM11196 M A, on her plea of guilty, respondent was convicted of violating Health and Safety Code sections 11377, subdivision (a), possession of methamphetamine, a misdemeanor, and 11364, subdivision (a), possession of drug paraphernalia, misdemeanors.

The Court ordered respondent to serve 30 days in the Orange County Jail.

The facts and circumstances underlying the conviction occurred on November 20, 2017, when Orange County Sheriff's deputies contacted respondent and found a clear glass pipe commonly used to smoke methamphetamine in her backpack. Contained within the end of the pipe was a usable quantity of methamphetamine.

6. Since 2014, the board has employed Noelle Randall, a pharmacist, as a board inspector. Prior to board employment, she worked as a pharmacist and

pharmacist-in-charge at Target. She is familiar with the duties and responsibilities of a pharmacist technician. She is familiar with respondent's criminal history. Ms. Randall explained the reason she believes respondent is not a good candidate to be licensed as a pharmacist technician.

7. Any pharmacist working in a pharmacy is responsible for what happens in the pharmacy, including supervising pharmacy technicians working in the pharmacy. As such, the pharmacist must trust the pharmacy technician. Pharmacist supervision does not mean that the pharmacist is always able to observe the pharmacist technician. Frequently, the pharmacist is on the telephone, answering questions at the counter or in the aisles, and can typically take a break lasting up to 30 minutes.

Among other things, the pharmacist technician can receive and sign for receipt of the drugs; usually the technician puts the drugs away; also, the license allows the pharmacist technician to pull, package and provide drugs to the pharmacist to check.

Despite numerous controls, it is common to have diversion of controlled substances in pharmacies. Diversion is not always detected the first time it happens; the diversion can remain undetected for years.

8. In Ms. Randall's opinion, a pharmacist technician has an important role in a pharmacy; the pharmacist technician must be trustworthy, have good judgment and not pose a risk for diversion of controlled substances; accordingly, respondent is not a good candidate to work in a pharmacy because of the concern about judgment and propensity for abuse of controlled substances.

Explanation and Rehabilitation

9. After her convictions, respondent tried to change her life. She completed the education and internship hours required to apply for her pharmacy technician license.

10. Respondent explained that she has changed and "is not the person she appears to be on paper." In respondent's opinion, she is rehabilitated and deserves to receive her license; she completed the hours, expended the time and paid the money to do so; she is honest, trustworthy and reliable; she did well in school; she received a good review from the pharmacist who supervised her during her internship; and she received a job offer from this same pharmacist. She testified when her application was denied, she told the pharmacist about her criminal record but did not ask the pharmacist "to write anything."

11. Respondent testified she does "not think anything can completely disqualify her [from obtaining the pharmacy technician registration] if she has done the hours and the internship."

Respondent admitted to abusing alcohol in 2016. After her DUI, she stopped drinking alcoholic beverages and became homeless. Respondent testified she "did not keep track of a sobriety date."

12. Despite two arrests for possession of drug paraphernalia found on her person and in her possession and resulting convictions, she denied using illegal drugs. When arrested in September 2017, respondent told the deputy that the pipe was a "water pipe." When arrested, she was not under the influence of a controlled substance. Neither police report stated respondent was under the influence at the time of arrest.

According to respondent, in 2017, she was homeless and associated with the wrong people; the 2017 convictions occurred because she was in the wrong place at the wrong time. Now she lives in a different area, has a different lifestyle, does not associate with the same people and her children (ages 10 and 20) are in her life.

13. Respondent stated that, after the DUI, she had a desire to become sober and made efforts to do so. She participated in at "Hope by the Sea," a sober living program; she paid to live there and did not receive treatment.

Also, right after her DUI, she attended an alcohol program required by the Department of Motor Vehicles (DMV); she did not explain whether it was after the DUI incident or conviction. Also, DMV required that she attend Alcoholics Anonymous (AA) meetings, which she attended once every other week beginning in 2018. After completing this requirement, she voluntarily continued to attend AA meetings. Respondent stopped attending AA meetings in early 2020 because of COVID. She does not plan to continue attending AA meetings because she does not believe it is necessary because she is "further along in her recovery and does not need that kind of support." However, she plans to obtain employment at a rehabilitation center.

14. Respondent understands complainant's concerns regarding the risk for diversion; however, she did not agree. During her internship for the last "couple of years," she was around and had access to dangerous drugs and controlled substances; there has been no theft attributable to her, and she has not been under the influence of controlled substances. In respondent's opinion, because of her criminal record, there is less risk of diversion because there are cameras monitoring and recording what happens in the pharmacy.

Disciplinary Considerations

15. On June 3, 2016, in Orange County Superior Court, Case No. 16HM02113 M A, the Court found respondent in violation of probation for failing to enroll in a six-month First Offender Alcohol Program by April 26, 2016. As a result of the violation, the Court ordered respondent to serve 10 days in Orange County Jail and stayed the order pending completion of the First Offender Alcohol Program and ordered her to serve six days in Orange County Jail.

16. On February 24, 2017, in Orange County Superior Court, Case No. 16HM02113 M A, the Court found respondent in violation of probation because she was terminated from the First Offender Alcohol Program on July 21, 2016; as such, she did not complete the First Offender Alcohol Program; in addition, she failed to report to the Orange County Jail to serve six days, which had been imposed on June 3, 2016. As a result of the violation, the Court ordered respondent to serve 30 days in Orange County Jail and terminated probation in this case.

LEGAL CONCLUSIONS

Purpose of Disciplinary Proceedings

1. The purpose of an administrative disciplinary proceeding is not to punish but to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Burden and Standard of Proof

4. A preponderance of the evidence establishes that the existence of a factual matter is more likely than not. As one court explained:

“Preponderance of the evidence” means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Jurisdiction

5. This Statement of Issues is brought before the Board of Pharmacy, Department of Consumer Affairs, under the following laws. All section references are to the Business and Professions Code (Code) unless otherwise stated.

6. Section 4300 of the Code states, in part:

(a) Every license issued may be suspended or revoked.

[¶] . . . [¶]

(b) 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. The

board may issue the license subject to any terms or conditions not contrary to public policy, including but not limited to, the following;

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy. . .

Relevant Statutes

7. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

[¶] . . . [¶]

(2) Conviction of a crime.

[¶] . . . [¶]

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of a license. . .

8. Complainant filed the Statement of Issues, dated February 26, 2020, alleging a violation of Section 480 of the Code. The matter was heard and submitted on October 6, 2020. On July 1, 2020, Section 480 of the Code was modified. "[T]he courts correlatively hold under the common law that when a pending action rests solely on a statutory basis, and when no rights have vested under the statute, 'a repeal of [the] statute without a saving clause will terminate all pending actions based thereon.'" (*Governing Board v. Mann* (1977) 18 Cal.3d 819, 829.) Additionally, when "a subsequently enacted specific statute directly conflicts with an earlier, more general provision, it is settled that the subsequent legislation effects a limited repeal of the former statute to the extent that the two are irreconcilable." (*Id.* at 828.) The *Mann* Court held that the board must "dispose of the case under the law in force when its decision is rendered." (*Id.* at 822-823.)

9. Effective July 1, 2020, Section 480 of the Code states, in part:

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime . . . if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the

qualifications, functions, or duties of the business or profession for which the application is made regardless of whether the applicant was incarcerated for that crime . . . or for which the applicant was released from incarceration within the preceding seven years from the date of the application. . .

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4952.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not

reflected on the report furnished by the Department of Justice.

- (d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication. . .

10. Effective July 1, 2020, Section 482 of the Code states, in part:

- (a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

- (1) Considering the denial of a license by the board under Section 480.

[¶] . . . [¶]

- (b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

- (1) The applicant or licensee has completed the criminal sentence without a violation of parole or probation.

- (2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated. . .

11. Effective July 1, 2020, Section 493 of the Code states, in part:

(a) Notwithstanding any other 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 . . . has been convicted of a crime substantially related to the qualifications, functions and duties of the licensee in question, the record 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) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature of the duties of the profession. . .

12. Section 4301 of the Code states, in part:

The board shall take action against the 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 . . . or the use of . . . alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself . . . or to any other person or to the public . . .

[¶] . . . [¶]

(j) The violation of any of the statutes of the state, of any other state, or the United States regulating controlled substances and dangerous drugs.

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions and duties of a licensee under this chapter. The record of a conviction 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 of . . . guilty . . . 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 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. . .

Relevant Regulations

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

When considering the denial of a . . . 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, shall consider the following criteria:

- (1) The nature and severity of the act(s) or offenses(s) as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crimes(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 sanction lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

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

For purposes of denial . . . of a personal . . . 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.

Violations

15. Pursuant to Section 480 of the Code, cause exists to deny respondent's application for pharmacy technician in that she has sustained three convictions, including DUI, possession of drug paraphernalia and possession of methamphetamine. Considering the duties of a pharmacy technician and the testimony of Ms. Randall, it was established that the crimes of which respondent has been convicted are substantially related to the qualifications, functions or duties of a pharmacist technician licensee.

16. Pursuant to Section 4301, subdivision (h), cause exists to deny respondent's application; when she drove her vehicle with .15 BAC that resulted in an accident, it was established that she used alcohol to the extent and in a manner that was dangerous to herself or the public.

17. Pursuant to Section 4301 of the Code, subdivisions (j) and (l), cause exists to deny respondent's application for pharmacy technician license in that she was convicted of violating controlled substance laws in 2017.

Appropriate Discipline

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

19. Respondent filed an application for pharmacist technician license. She has sustained a DUI conviction as well as a conviction for possession of drug paraphernalia and possession of a controlled substance. Complainant established that these crimes are substantially related to the qualifications, functions and duties of a pharmacy technician because of the possibility that she might divert dangerous or controlled substances and the difficulty, even with monitors in place, for detecting this activity.

Respondent disagrees with Ms. Randall and argues that she is rehabilitated and is not a danger to the public. Hopefully, respondent is correct that she is rehabilitated but her position is not supported by evidence.

Respondent described her efforts at rehabilitation. There is some question about her credibility. She did not dispute that she abused alcohol but denied that she abused other substances. Though she denied that the drug paraphernalia and methamphetamine was hers, neither at the time of her arrest, in the criminal court hearing, or in the instant matter did respondent explain how the drug paraphernalia ended up in her possession. Further, she told an arrest sheriff's deputy that what was found in her possession was a "water pipe" when she knew it was not.

Respondent did not attend the court-ordered First Offender Alcohol Program but testified that she attended the Alcohol Program required by DMV but offered no other testimony or documentary evidence to establish that she attended the DMV Alcohol Program Further, respondent testified that she began attending AA meetings in 2018, two years after her DUI conviction but offered no other testimony or documentary evidence in support of the foregoing.

Respondent asserts that she has been sober since 2016 but could not recall her sobriety date. This is not credible considering the significance of sobriety dates in AA, and she testified that she attended AA meetings for two years up until early 2020. Again, she offered no other testimony or documentary evidence from anyone

Respondent had a substance abuse problem but asserts that she is rehabilitated and presumably sober. Given the significant duties and responsibilities of a pharmacy technician, complainant requires more evidence to support her testimony in order to be assured that it is not contrary to the public interest to issue her a license at this time.

Given respondent's convictions, insufficient evidence of rehabilitation, and the persuasive testimony of Ms. Randall, which was supported by her education, training and experience, it would be contrary to the public interest to issue respondent a pharmacy technician license at this time.

ORDER

1. The decision of the Board of Pharmacy to deny the application of Nicole Lee Patton, also known as Nicole Dendy, also known as Nicole Torres for a pharmacy technician license is sustained.

2. The appeal of Nicole Lee Patton, also known as Nicole Dendy, also known as Nicole Torres, is denied.

3. The application for a pharmacy technician license of Nicole Lee Patton, also known as Nicole Dendy, also known as Nicole Torres, is denied.

DATE: November 6, 2020

Vallera Johnson

VALLERA J. JOHNSON

Administrative Law Judge

Office of Administrative Hearings

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

14 In the Matter of the Statement of Issues
Against:

Case No. 6892

15 **NICOLE LEE PATTON, AKA NICOLE**
16 **DENDY, AKA NICOLE TORRES**

STATEMENT OF ISSUES

17 **Pharmacy Technician Registration**
18 **Applicant**

Respondent.

19
20 **PARTIES**

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

23 2. On or about May 20, 2019, the Board of Pharmacy, Department of Consumer Affairs
24 received an application for a Pharmacy Technician Registration from Nicole Lee Patton, aka
25 Nicole Dendy, aka Nicole Torres (Respondent). On or about May 15, 2019, Nicole Lee Patton
26 certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Board denied the application on November 18, 2019.

28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 ...

8 (c) The board may refuse a license to any applicant guilty of unprofessional
9 conduct. The board may, in its sole discretion, issue a probationary license to any
10 applicant for a license who is guilty of unprofessional conduct and who has met all
11 other requirements for licensure. The board may issue the license subject to any
12 terms or conditions not contrary to public policy, including, but not limited to, the
13 following:

14 (1) Medical or psychiatric evaluation.

15 (2) Continuing medical or psychiatric treatment.

16 (3) Restriction of type or circumstances of practice.

17 (4) Continuing participation in a board-approved rehabilitation program.

18 (5) Abstention from the use of alcohol or drugs.

19 (6) Random fluid testing for alcohol or drugs.

20 (7) Compliance with laws and regulations governing the practice of pharmacy.

21

22 **STATUTORY PROVISIONS**

23 5. Section 475 of the Code states:

24 (a) Notwithstanding any other provisions of this code, the provisions of this
25 division shall govern the denial of licenses on the grounds of:

26 (1) Knowingly making a false statement of material fact, or knowingly omitting
27 to state a material fact, in an application for a license.

28 (2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent
to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

1 (b) Notwithstanding any other provisions of this code, the provisions of this
2 division shall govern the suspension and revocation of licenses on grounds specified
3 in paragraphs (1) and (2) of subdivision (a) .

4 (c) A license shall not be denied, suspended, or revoked on the grounds of a
5 lack of good moral character or any similar ground relating to an applicant's
6 character, reputation, personality, or habits.

7 6. Section 480 of the Code states:

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

10 (1) Been convicted of a crime. A conviction within the meaning of this section
11 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
12 Any action that a board is permitted to take following the establishment of a
13 conviction may be taken when the time for appeal has elapsed, or the judgment of
14 conviction has been affirmed on appeal, or when an order granting probation is made
15 suspending the imposition of sentence, irrespective of a subsequent order under the
16 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

17 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
18 substantially benefit himself or herself or another, or substantially injure another.

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

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

24 (b) Notwithstanding any other provision of this code, a person shall not be
25 denied a license solely on the basis that he or she has been convicted of a felony if he
26 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
27 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
28 convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be
denied a license solely on the basis of a conviction that has been dismissed pursuant
to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of
the Penal Code shall provide proof of the dismissal.

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

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

7. Section 481 of the Code states:

Each board under the provisions of this code shall develop criteria to aid it,
when considering the denial, suspension or revocation of a license, to determine

1 whether a crime or act is substantially related to the qualifications, functions, or
2 duties of the business or profession it regulates.

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

5 8. Section 482 of the Code states:

6 (a) Each board under the provisions of this code shall develop criteria to
7 evaluate 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
11 furnished by the applicant or licensee.

12 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
13 2021, is repealed.

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

18 10. Section 493 of the Code states:

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

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

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

11. Section 4301 of the Code states, in pertinent part:

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

1 (a) Procurement of a license by fraud or misrepresentation.

2 ...

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

6 ...

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

12 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving
13 away, or administering, or offering to sell, furnish, give away, or administer, any
14 controlled substance to an addict.

15 (j) The violation of any of the statutes of this state, of any other state, or of the
16 United States regulating controlled substances and dangerous drugs.

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

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

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1 **REGULATORY PROVISIONS**

2 12. California Code of Regulations, title 16, section 1769 states, in pertinent part:

3 ...

4 (b) When considering the denial of a facility or personal license under Section
5 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
6 of the applicant and his present eligibility for licensing or registration, will consider
7 the following criteria:

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

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

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

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

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

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

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

26 **FIRST CAUSE FOR DENIAL OF APPLICATION**

27 (March 29, 2016 Conviction – DUI)

28 14. Respondent's application is subject to denial under Code section 480 in that on or
about March 29, 2016, in a criminal proceeding entitled *People of the State of California v.*
Nicole Patton in Orange County Superior Court, Case Number 16HM02113 M A, Respondent
was convicted on her plea of guilty of a misdemeanor violation of Vehicle Code section 23152(a),
and her admission of an enhancement under Vehicle Code section 23578. As a result of the
conviction, Respondent was placed on summary probation for 3 years. Respondent was ordered
to, among other things, complete 80 hours of community service and complete a six-month First
Offender Alcohol program.

1 15. The circumstances surrounding the offense are that on January 31, 2016, Respondent
2 drove her vehicle off the roadway and over the adjacent raised curb, damaging both right side
3 tires and rims of her vehicle. Respondent left her vehicle and was brought back to the scene of
4 the collision by a deputy with the Orange County Sheriff's Department. Respondent displayed
5 objective signs of alcohol intoxication and was arrested. Samples of Respondent's breath
6 following her arrest revealed she had a blood alcohol content of .15%.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 (November 22, 2017 Conviction – Possession of Drug Paraphernalia)

9 16. Respondent's application is subject to denial under Code section 480 in that on or
10 about November 22, 2017, in a criminal proceeding entitled *People of the State of California v.*
11 *Nicole Patton* in Orange County Superior Court, Case Number 17HM10721 M A, Respondent
12 was convicted on her plea of guilty of a misdemeanor violation of Health and Safety Code section
13 11364(a). As a result of the conviction, Respondent was ordered to, among other things, serve 30
14 days in the Orange County Jail.

15 17. The circumstances surrounding the offense are that on September 18, 2017,
16 Respondent was contacted by deputies with the Orange County Sheriff's Department and found
17 to be carrying in her front pocket a clear glass pipe commonly used to smoke methamphetamine.
18 The pipe had burn marks and contained white crystalline residue consistent with
19 methamphetamine. A second methamphetamine pipe was located within the bags Respondent
20 had with her.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 (November 22, 2017 Conviction - Possession of a Controlled Substance & Paraphernalia)

23 18. Respondent's application is subject to denial under Code section 480 in that on or
24 about November 22, 2017, in a criminal proceeding entitled *People of the State of California v.*
25 *Nicole Patton* in Orange County Superior Court, Case Number 17HM11196 M A, Respondent
26 was convicted on her plea of guilty of misdemeanor violations of Health and Safety Code sections
27 11377(a) and 11364(a). As a result of the conviction, Respondent was ordered to, among other
28 things, serve 30 days in the Orange County Jail.

1 19. The circumstances surrounding the offense are that on November 20, 2017,
2 Respondent was contacted by deputies with the Orange County Sheriff's Department and found
3 to be carrying in her backpack a clear glass pipe commonly used to smoke methamphetamine.
4 Contained within the end of the pipe was a usable quantity of apparent methamphetamine.

5 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

6 (Unprofessional Conduct – Dangerous Use of Alcohol)

7 20. Respondent's application is subject to denial under Code section 4301, subdivision
8 (h) in that she used alcohol to the extent and in a manner that was dangerous and injurious to
9 herself or the public, as described in paragraphs 14-15 above, which are herein incorporated by
10 reference.

11 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

12 (Unprofessional Conduct – Violation of Controlled Substances Laws)

13 21. Respondent's application is subject to denial under Code section 4301, subdivisions
14 (j) and (l) in that she was convicted of violating controlled substance laws as described in
15 paragraphs 16-19 above, which are herein incorporated by reference.

16 **DISCIPLINARY CONSIDERATIONS**

17 22. To determine the degree of discipline, if any, to be imposed on Respondent,
18 Complainant alleges:

19 23. On or about June 3, 2016 Respondent was found in violation of probation in Orange
20 County Superior Court Case Number 16HM02113 M A for failing to enroll in a six-month First
21 Offender Alcohol Program by April 26, 2016. An order to serve 10 days in the Orange County
22 Jail as a result of the violation was stayed pending completion of the Alcohol Program.

23 24. On or about February 24, 2017 Respondent was found in violation of probation in
24 Orange County Superior Court Case Number 16HM02113 M A for failing to complete a six-
25 month First Offender Alcohol Program following her termination from the program on July 21,
26 2016, and for failing to report to the Orange County Jail to serve 6 days, which had been imposed
27 on June 3, 2016. Respondent was ordered to serve 30 days in the Orange County Jail, and
28 probation was ordered terminated.

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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. Denying the application of Nicole Lee Patton, aka Nicole Dendy, aka Nicole Torres for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: February 26, 2020



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

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