

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

In the Matter of the Accusation Against:

ASHLEY LORRAIN HESTER,

PHARMACY TECHNICIAN REGISTRATION NO. TCH 169675

Respondent

Agency Case No. 7063

OAH No. 2021030462

DOJ MATTER ID: LA2020603983

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, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to Page 13, Paragraph 1 of the Order:

The name "Ashley Lorrain Hector" should read "Ashley Lorrain Hester".

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective at 5:00 p.m. on September 29, 2021. It is so ORDERED on August 30, 2021.

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

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large, sweeping initial "S".

By _____
Seung W. Oh, Pharm D
Board President

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PROPOSED DECISION

Deena R. Ghaly, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on May 10, 2021.

Megan Cross, Deputy Attorney General, represented Complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Respondent Ashley Lorrain Hester was present for the hearing and represented herself.

Testimony and documentary evidence was received. The record closed, and the matter was submitted for decision on May 10, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant brought the Accusation in her official capacity. Respondent timely filed a notice of defense and this hearing followed.

Respondent's License Status

2. The Board issued Pharmacy Technician Registration Number TCH 169675 to Respondent on January 16, 2019. The registration expired on May 31, 2020 and has not been renewed.

Respondent's Criminal History

3. A. On August 14, 2012, in the Superior Court of California, County of Kern, Case Number BM808193A, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs), a misdemeanor. The court sentenced Respondent to serve two days in jail and placed her on three years' probation. The record did not establish the terms and conditions of Respondent's probation.

B. The facts and circumstances underlying the August 2012 conviction are that Respondent drank to excess on her 21st birthday and then drove her vehicle.

4. A. On July 31, 2019, in the Superior Court of California, County of Kern, Case Number BM938412A, Respondent pled nolo contendere and was convicted of

violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs), a misdemeanor. The court sentenced Respondent to serve 45 days in jail, ordered her to complete an 18-month second offender DUI program and placed her on 60 months' probation.

B. The facts and circumstances leading to her July 2019 criminal conviction were not established in the record.

5. A. On July 13, 2020, in the Superior Court of California, County of Los Angeles, Case Number 9SC02916, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (b) (driving while having .08 percent or more, by weight, of alcohol in her blood), a misdemeanor. The court sentenced Respondent to serve 120 days in jail, ordered her to complete an 18-month second offender DUI program and placed her on 60 months' probation. Respondent's probation term is scheduled to end in July 2025.

B. The facts and circumstances leading to Respondent's July 2020 conviction are that on June 16, 2019, police officers observed Respondent walking barefoot and in shorts in cold weather and late at night. The officers performed a welfare check and detected an alcohol odor emanating from her. They asked Respondent if she intended to drive and she told them that she recognized she was not in a condition to drive and would take a taxi home. Approximately an hour later, the officers observed a vehicle making an illegal U-turn as it passed the officers' patrol car and later observed it lurching as it drove on after a stop. Respondent was the vehicle's driver. The officers pulled over Respondent, administered some field sobriety tests, determined she was under the influence of alcohol, and arrested her.

Prior Board Discipline

6. A. On September 3, 2019, the Board issued a citation against Respondent based on her 2012 and 2019 criminal convictions and alleging three violations: (1) Unprofessional conduct in violation of Business and Professions Code § 4301, subd. (k),¹ conviction of more than one crime involving the use of a dangerous drug or alcohol; (2) Unprofessional conduct in violation of § 4301, subd. (h), administering a dangerous drug or alcohol in a dangerous or injurious manner; and (3) Unprofessional conduct in violation of § 4301, subd. (j), conviction of a crime related to the practice of pharmacy. The Board assessed an \$850 fine for the first assessment and no penalty for the latter two violations.

B. The citation penalty amount was due on October 3, 2019. Respondent neither disputed the citation nor paid the fine.

Respondent's Evidence

7. Respondent is the single mother of a child exhibiting early signs of autism. She has no extended family in the area and is essentially alone with her responsibilities. Respondent currently works for Dignity Health in a role not established by the record, earning \$15 per hours. Respondent stated that it may be possible to work as a pharmacy technician at her current employer; however, she also stated that she does not believe she is "ready" to return to pharmacy technician responsibilities.

¹ Further statutory references are to the Business and Professions Code.

8. Regarding her alcohol-related crimes, Respondent stated that they arose out of two discrete times in her life. In the first, she had gone out to celebrate her 21st birthday, drank to excess, and then drove. During the second period, resulting in the 2019 and 2020 conviction, she was undergoing an exceptionally stressful time in her life, stemming from family problems and financial pressures and took to drinking heavily in an effort to relieve her stress.

9. Respondent maintained that she is now living a sober lifestyle. She does not have an exact sobriety date but states she stopped using alcohol sometime around December 2019. Respondent further maintained that she took several steps to assist her in achieving sobriety, including meeting with a therapist for a period of approximately six months, recognizing her "triggers" when her emotions overwhelm her self-control, practicing crafts to ease stress, and attending addiction recovery meeting at her church when her schedule permits. Respondent did not produce any evidence corroborating her testimony and did not establish that she is in compliance with her probationary terms.

Costs

10. Based on the Certificate of Prosecution Costs signed by Ms. Cross and the attached Matter Time Activity Report, the Board has requested that Respondent pay \$6,755 for the prosecution of this matter. Given the scope and number of violations involved, these costs are reasonable.

LEGAL CONCLUSIONS

1. The Board is responsible for licensing and disciplining pharmacy technicians. (§ 4300.) The Board's highest priority is protection of the public. (§ 4001.1.)

Expiration of a Board-issued license does not divest the Board from its authority to revoke or discipline the license. (§ 4300.1.)

Grounds for Discipline

CONVICTION OF A SUBSTANTIALLY RELATED CRIME

2. A. The Board may suspend or revoke a license or registration if the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the vocation or profession for which the license was issued. (§ 490.)

B. The Board may revoke or suspend a pharmacy technician registration for unprofessional conduct if the registrant has been convicted of a crime substantially related to the qualifications, functions, and duties of a licensee. (§ 4301, subd. (j)). An act is substantially related to the qualifications, functions, or duties of a pharmacy technician registrant if it evidences her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16 (CCR), § 1770.)

C. Cause exists to discipline Respondent's pharmacy technician registration, pursuant to sections 490, 4301, subdivision (j) and CCR § 1770, because she has been convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician, as set forth in Factual Findings 5A and 5B, and Legal Conclusions 2A and 2B. Respondent's crime of driving while intoxicated demonstrates a lack of concern for the safety of others on the road and a propensity to flout the law. These characteristics are inconsistent with the duties and responsibilities of pharmacy technicians who have access to dangerous drugs and maintain a position of trust for their customers.

UNPROFESSIONAL CONDUCT

3. The Board may revoke or suspend a pharmacy technician registration for unprofessional conduct if a licensee has been convicted of more than one crime involving the misuse of dangerous drugs or alcohol. (§ 4301, subd. (k)). Cause exists to discipline Respondent's registration pursuant to § 4301, subdivision (k) because she has been convicted of multiple alcohol-related convictions as set out in Factual Findings 3 through 5.

DANGEROUS USE OF ALCOHOL

4. The Board may revoke or suspend a pharmacy technician registration for unprofessional conduct if a registrant has engaged in the dangerous use of alcohol. (§ 4301, subd. (h)). Cause exists to discipline Respondent's registration pursuant to section 4301, subdivision (h) by driving after drinking to excess as set out in Factual Finding 5B.

FAILURE TO COMPLY WITH CITATION

5. A. The Board may revoke or suspend a pharmacy technician registration for unprofessional conduct if the licensee has violated any federal or state law or regulation governing pharmacy. (§ 4301, subd. (o).)

B. CCR section 1775.1, subdivision (d), provides:

(d) Failure of a person or entity to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action by the [B]oard.

When a citation is not contested and a fine is not paid, the full amount of the fine shall be added to the fee for renewal

of the license and the license shall not be renewed without payment of the renewal fee and fine.

C. Cause exists to discipline Respondent's license pursuant to section 4301, subdivision (o), in conjunction with CCR section 1775.1, subdivision (d) because she failed to pay or otherwise challenge the citation the Board issued in September 2019 as set out Factual Finding 6.

Disposition

6. The Board has adopted Disciplinary Guidelines and Uniform Standards Related to Substance Abuse (Disciplinary Guidelines), incorporated by reference at CCR section 1760, for use in reaching a decision on a disciplinary action under the Administrative Procedure Act. Regarding drug and alcohol related violations, the Guidelines note generally:

The Board recognizes the importance of ensuring the safe and effective delivery of dangerous drugs and controlled substances for therapeutic purposes. At the same time and given the historical and current abuse and diversion of drugs, particularly controlled substances, the [B]oard believes there should be no tolerance for licensees who traffic in drugs or who, in the absence of appropriate evidence of rehabilitation, personally abuse drugs or alcohol.

(Disciplinary Guidelines, p. 1)

7. In determining the level of seriousness of penalty, the Disciplinary Guideline provide the following:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record . . .
4. prior warning(s), including . . . citation(s)
5. number and/or variety of current violations
6. nature and severity of the [acts leading to discipline]
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. . . . dismissal. . . pursuant to [Penal Code section 1203.4]
13. time passed since the act(s)
14. whether the conduct was intentional or negligent
15. financial benefit to the respondent from the misconduct

16. other licenses held by the respondent and license history of those licenses

(Disciplinary Guidelines, p. 3.)

8. Mitigation evidence the Board considers persuasive include letters from work supervisors with detailed information about a respondent's work skills and ethics; letters from psychologists with personal knowledge of a respondent, including diagnoses and current state of recovery; evidence of ongoing participation in rehabilitation programs such as Alcoholics Anonymous; laboratory results or physician reports with evidence of a respondent's sustained abstinence; and character references from close personal friends. (See Disciplinary Guidelines, p. 4.)

9. Under the Disciplinary Guidelines, violations are categorized as more or less serious. Category 1 is the least serious and Category 4, the most. The number of violations is also a factor in establishing the seriousness of a disciplinary action. (See Disciplinary Guidelines, p. 5). Violations arising from criminal convictions for alcohol abuse are Category 4 violations and the recommended penalty is revocation. (*Id.* at p. 8.)

Discussion

10. Applying the relevant factors from the Disciplinary Guidelines to Respondent:

A. Although there was no actual harm to any member of the public or consumer, excessive drinking and the bad judgment inherent in driving after excessive drinking creates the risk of potential harm to the public.

B. Respondent has no prior disciplinary record with the Board but did receive – and ignored – a prior Board citation for the same type of violation. The current disciplinary action has raised four violations of the laws and regulations governing pharmacy technician registrants, three of which are categorized at the most serious level, Category 4, under the Board’s Disciplinary Guidelines.

C. Respondent’s pre-licensure criminal conviction for drunk driving, repeat violations since then, failure to respond to the Board’s citation or even acknowledge it, complete lack of evidence at her hearing except for her uncorroborated testimony, and the number and recency of her criminal convictions represent aggravating factors.

D. Of particular relevance is Respondent’s representation to the police officers at her arrest before her most recent arrest. Respondent acknowledged she was not fit to drive then drove anyway, indicating intentionality, a highly aggravating factor. In addition, the alcohol-related violations fall into the most serious category under the Board’s system.

E. Respondent failed to provide any letters, physicians’ reports, or any other records demonstrating her sobriety or compliance with probation terms.

11. Considering the factors together, the weight of the evidence support the conclusion that revocation of Respondent’s license is appropriate and necessary for the public safety.

Costs

12. A. Regarding costs, the Disciplinary Guidelines provide in pertinent part: “The [B]oard seeks recovery of all investigative and prosecution costs up to the

hearing in all disciplinary cases. This includes all charges of the Office of the Attorney General . . . The [B]oard believes that the burden of paying for disciplinary cases should fall on those whose conduct requires investigation and prosecution, not on the profession as a whole. (Disciplinary Guidelines, p. 2.)

B. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32,45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus, the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." The Board must also consider whether the licensee has a good faith belief in the merits of her position in challenging the disciplinary action or has raised any colorable defenses, whether the licensee will be financially able to pay the costs, and whether the costs requested are reasonable. (*Ibid.*)

13. Respondent has not presented any meritorious defenses and has not succeeded in reducing the penalty. The costs requested are reasonable as set out in Factual Finding 10. Her life circumstances and limited income, however, will make paying the Board's costs overly onerous on her after her license is revoked. Equitable considerations support the conclusion that the Board should impose costs on her only if her license is reinstated and subject to a payment plan under terms it deems appropriate.

ORDER

1. Board of Pharmacy Technician Registration Number TCH 169675 issued to Ashley Lorrain Hector is revoked.

2. Should the Board reinstate Respondent's registration, she is required to pay the citation penalty of \$850 and assessed costs of \$6,755 as a condition of reinstatement. Respondent may pay these penalties and costs pursuant to a payment plan approved by the Board.

DATE: 06/02/2021

Deena R. Ghaly

Deena R. Ghaly (Jun 2, 2021 10:23 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 CARL W. SONNE
Senior Assistant Attorney General
3 THOMAS L. RINALDI
Supervising Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6310
6 Facsimile: (916) 731-2126
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 7063

13 **ASHLEY LORRAIN HESTER**

ACCUSATION

14 10801 Dapple Way
Bakersfield, CA 93312

15 Pharmacy Technician Registration
16 No. TCH 169675

Respondent.

17
18 **PARTIES**

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

22 2. On or about January 16, 2019, the Board issued Pharmacy Technician Registration
23 Number TCH 169675 to Ashley Lorrain Hester (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 expired on May 31, 2020, and has not been renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 4300 states:

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

6 (b) The board shall discipline the holder of any license issued by the board,
7 whose default has been entered or whose case has been heard by the board and found
8 guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding one year.

12 (4) Revoking his or her license.

13 (5) Taking any other action in relation to disciplining him or her as the board in
14 its discretion may deem proper.

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

21 (1) Medical or psychiatric evaluation.

22 (2) Continuing medical or psychiatric treatment.

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

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

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

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

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

28 (d) The board may initiate disciplinary proceedings to revoke or suspend any
probationary certificate of licensure for any violation of the terms and conditions of
probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

 (e) The proceedings under this article shall be conducted in accordance with
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
Government Code, and the board shall have all the powers granted therein. The
action shall be final, except that the propriety of the action is subject to review by the

superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Section 4300.1 states:

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

STATUTORY PROVISIONS

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

7. Section 4301 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:

...

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

....

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances 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

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment.

3

4 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
5 abetting the violation of or conspiring to violate any provision or term of this chapter
6 or of the applicable federal and state laws and regulations governing pharmacy,
7 including regulations established by the board or by any other state or federal
8 regulatory agency.

9 **REGULATORY PROVISIONS**

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

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

18 9. California Code of Regulations, title 16, section 1775.1, states, in pertinent part:

19

20 (d) Failure of a person or entity cited to pay a fine within 30 days of the date of
21 assessment, unless the citation is being appealed, may result in disciplinary action by
22 the board. When a citation is not contested and a fine is not paid, the full amount of
23 the fine shall be added to the fee for renewal of the license and the license shall not be
24 renewed without payment of the renewal fee and fine.

25 **COST RECOVERY**

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

29 **FIRST CAUSE FOR DISCIPLINE**

30 **(Conviction of a Substantially Related Crime)**

31 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
32 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
33 Respondent was convicted of a crime substantially related to the qualifications, functions or
34 duties of a pharmacy technician. Specifically, on or about July 13, 2020, after pleading nolo
35 contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code

1 section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in her
2 blood] in the criminal proceeding entitled *The People of the State of California v. Ashley Lorraine*
3 *Hester* (Super. Ct. L.A. County, 2020, No. 9SC02916). The court sentenced Respondent to serve
4 120 days in jail, ordered her to complete an 18-month second offender DUI program and placed
5 her on 60 months' probation, with terms and conditions. The circumstances surrounding the
6 conviction are that on or about June 16, 2019, officers conducted a welfare check, after observing
7 Respondent walking barefoot and wearing shorts in cold weather. Respondent stated that she had
8 gone to the hospital in an ambulance with her date and was walking back to her vehicle. Officers
9 transported Respondent back to her vehicle to obtain her shoes and wallet. One of the officers
10 could smell the odor of alcohol emitting from Respondent's breath and person and asked if she
11 planned to drive. Respondent stated she was planning to take a taxi back to the hospital. Other
12 officers who arrived on the scene transported Respondent back to the hospital. Later, officers
13 observed a vehicle suddenly make an illegal turn and recognized Respondent as the driver after
14 which she was detained. While at the scene, Respondent submitted to a series of field sobriety
15 tests which she was unable to complete as explained and demonstrated. Respondent also
16 submitted to a Preliminary Alcohol Screening that revealed a blood alcohol content level of
17 0.14% on the first reading and 0.12% on the second reading.

SECOND CAUSE FOR DISCIPLINE

(Alcohol Related Convictions)

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20 12. Respondent is subject to disciplinary action under section 4301, subdivision (k), on
21 the grounds of unprofessional conduct, in that, on or about July 13, 2020, Respondent sustained a
22 third alcohol related conviction. Complainant refers to, and by this reference incorporates, the
23 allegations set forth above in paragraph 11 and 15 below, as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

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25
26 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
27 the grounds of unprofessional conduct, in that, on or about June 16, 2019, Respondent used
28 alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any person, or

1 the public. Complainant refers to, and by this reference incorporates, the allegations set forth
2 above in paragraph 11, as though fully set forth herein.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Citation)**

5 14. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
6 that she failed to comply with California Code of Regulations, title 16, section 1775.1,
7 subdivision (d), by either appealing or complying with a citation issued by the Board. The facts
8 and circumstances are that on or about September 3, 2019, the Board of Pharmacy issued Citation
9 Number CI 2018 84158 requiring Respondent to pay an \$850.00 fine on or before October 3,
10 2019. Respondent did not appeal the citation and has not paid the fine.

11 **DISCIPLINE CONSIDERATIONS**

12 15. To determine the degree of discipline, if any, to be imposed on Respondent,
13 Complainant alleges, as follows:

14 a. On or about July 31, 2019, after pleading nolo contendere, Respondent was convicted
15 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving
16 under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the*
17 *State of California v. Ashley Lorraine Hester* (Super. Ct. Kern County, 2019, No. BM938412A).
18 The court sentenced Respondent to serve 45 days in jail and placed her on 3 years' probation,
19 with terms and conditions.

20 b. On or about August 14, 2012, after pleading nolo contendere, Respondent was
21 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
22 [driving under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of*
23 *the State of California v. Ashley Lorraine Kirk* (Super. Ct. Kern County, 2012, No. BM808193A).
24 The court sentenced Respondent to serve 2 days in jail and placed her on 3 years' probation, with
25 terms and conditions.

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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. Revoking or suspending Pharmacy Technician Registration Number TCH 169675, issued to Ashley Lorrain Hester;
2. Ordering Ashley Lorrain Hester 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: 1/19/2021

Signature on File

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

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