

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

In the Matter of the Accusation Against:

ERIKA C. DAY, Respondent

Pharmacy Technician Registration No. TCH 72583

Agency Case No. 7092

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order 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 October 7, 2021.

It is so ORDERED on September 7, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly distinguishable.

Seung W. Oh, Pharm.D.
Board President

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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 Accusation Against:

Case No. 7092

14 **ERIKA C. DAY**
15 **34851 Sauer Rd.**
16 **Wildomar, CA 92595**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 **Pharmacy Technician No. TCH 72583**

18 Respondent.

19
20
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
25 (Board). She brought this action solely in her official capacity and is represented in this matter by
26 Rob Bonta, Attorney General of the State of California, by Craig S. Menchin, Deputy Attorney
27 General.

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2. Respondent Erika C. Day (Respondent) is represented in this proceeding by attorney Christopher J. Whelton, whose address is: 30754 Wealth Street, Murrieta, CA 92563.

3. On or about October 17, 2006, the Board issued Pharmacy Technician No. TCH 72583 to Erika C. Day (Respondent). The Pharmacy Technician was in full force and effect at all times relevant to the charges brought in Accusation No. 7092, and will expire on May 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 7092 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 7, 2021. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 7092 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 7092. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 7092.

4 10. Respondent agrees that her Pharmacy Technician is subject to discipline and she
5 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 **CONTINGENCY**

7 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
8 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
9 communicate directly with the Board regarding this stipulation and settlement, without notice to
10 or participation by Respondent or her counsel. By signing the stipulation, Respondent
11 understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation
12 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
13 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
14 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
15 and the Board shall not be disqualified from further action by having considered this matter.

16 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
17 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
18 signatures thereto, shall have the same force and effect as the originals.

19 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
20 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
21 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
22 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
23 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
24 writing executed by an authorized representative of each of the parties.

25 14. In consideration of the foregoing admissions and stipulations, the parties agree that
26 the Board may, without further notice or formal proceeding, issue and enter the following
27 Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Technician No. TCH 72583 issued to Respondent Erika C. Day is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on 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, no contest, or similar, in any state or federal

criminal proceeding to any criminal complaint, information or indictment

a conviction of any crime

the filing of a disciplinary pleading, issuance of a citation, or initiation of another

administrative action filed by any state or federal agency which involves

respondent's license or which is related to the practice of pharmacy or the

manufacturing, obtaining, handling, distributing, billing, or charging for any drug,

device or controlled substance.

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

2. Report to the Board

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

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

1 probation shall be automatically extended until such time as the final report is made and accepted
2 by the board.

3 **3. Interview with the Board**

4 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
5 with the board or its designee, at such intervals and locations as are determined by the board or its
6 designee. Failure to appear for any scheduled interview without prior notification to board staff,
7 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
8 the period of probation, shall be considered a violation of probation.

9 **4. Cooperate with Board Staff**

10 Respondent shall timely cooperate with the board's inspection program and with the board's
11 monitoring and investigation of respondent's compliance with the terms and conditions of her
12 probation, including but not limited to: timely responses to requests for information by board
13 staff; timely compliance with directives from board staff regarding requirements of any term or
14 condition of probation; and timely completion of documentation pertaining to a term or condition
15 of probation. Failure to timely cooperate shall be considered a violation of probation.

16 **5. Reporting of Employment and Notice to Employers**

17 During the period of probation, respondent shall notify all present and prospective
18 employers of the decision in case number 7092 and the terms, conditions and restrictions imposed
19 on respondent by the decision, as follows:

20 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
21 undertaking any new employment, respondent shall report to the board in writing the name,
22 physical address, and mailing address of each of employer(s), and the name(s) and telephone
23 number(s) of all direct supervisor(s), as well as any pharmacist(s)-in- charge, designated
24 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work
25 schedule, if known. Respondent shall also include the reason(s) for leaving the prior
26 employment. Respondent shall sign and return to the board a written consent authorizing the
27 board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and
28 authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,

1 concerning respondent's work status, performance, and monitoring. Failure to comply with the
2 requirements or deadlines of this condition shall be considered a violation of probation.

3 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
4 respondent undertaking any new employment, respondent shall cause her (a) direct supervisor, (b)
5 pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
6 compliance supervisor, and (c) the owner or owner representative of employer, to report to the
7 board in writing acknowledging that the listed individual(s) has/have read the decision in case
8 number 7092, and terms and conditions imposed thereby. If one person serves in more than one
9 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
10 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
11 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
12 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in
13 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
14 in case number 7092, and the terms and conditions imposed thereby.

15 If respondent works for or is employed by or through an employment service, respondent
16 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
17 of the decision in case number 7092, and the terms and conditions imposed thereby in advance of
18 respondent commencing work at such licensed entity. A record of this notification must be
19 provided to the board upon request.

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

26 Failure to timely notify present or prospective employer(s) or failure to cause the identified
27 person(s) with that/those employer(s) to submit timely written acknowledgments to the board
28 shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician license 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. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$2,696.25. Respondent shall make said payments as follows:

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

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

8. 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.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current Pharmacy Technician with the board, including any period during which suspension or probation is tolled.

1 Failure to maintain an active, current Pharmacy Technician shall be considered a violation of
2 probation.

3 If respondent's Pharmacy Technician expires or is cancelled by operation of law or
4 otherwise at any time during the period of probation, including any extensions thereof due to
5 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
6 terms and conditions of this probation not previously satisfied.

7 **10. License Surrender While on Probation/Suspension**

8 Following the effective date of this decision, should respondent cease practice due to
9 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
10 respondent may relinquish her license, including any indicia of licensure issued by the board,
11 along with a request to surrender the license. The board or its designee shall have the discretion
12 whether to accept the surrender or take any other action it deems appropriate and reasonable.
13 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to
14 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
15 become a part of the respondent's license history with the board.

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

23 **11. Certification Prior to Resuming Work**

24 Respondent shall be suspended, and shall not work as a pharmacy technician, until she has
25 been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has
26 submitted proof of certification to the board, and has been notified by the board or its designee
27 that she may begin work. Failure to achieve certification within six (6) months of the effective
28 date shall be considered a violation of probation.

1 During suspension, respondent shall not enter any pharmacy area or any portion of any
2 other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-
3 animal drug retailer or any other distributor of drugs which is licensed by the board, or any
4 manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled
5 substances are maintained.

6 Respondent shall not do any act involving drug selection, selection of stock, manufacturing,
7 compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the
8 board. Respondent shall not have access to or control the ordering, distributing, manufacturing or
9 dispensing of dangerous drugs and/or dangerous devices or controlled substances.

10 During this suspension, respondent shall not engage in any activity that requires licensure
11 as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of
12 pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or
13 dangerous devices, or controlled substances.

14 Failure to comply with any such suspension shall be considered a violation of probation.

15 **12. Practice Requirement – Extension of Probation**

16 Except during periods of suspension, respondent shall, at all times while on probation, be
17 employed as a Pharmacy Technician in California for a minimum of 120 hours per calendar
18 month. Any month during which this minimum is not met shall extend the period of probation by
19 one month. During any such period of insufficient employment, respondent must nonetheless
20 comply with all terms and conditions of probation, unless respondent receives a waiver in writing
21 from the board or its designee.

22 If respondent does not practice as a Pharmacy Technician in California for the minimum
23 number of hours in any calendar month, for any reason (including vacation), respondent shall
24 notify the board in writing within ten (10) days of the conclusion of that calendar month. This
25 notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s)
26 for the interruption or reduction in practice; and the anticipated date(s) on which respondent will
27 resume practice at the required level. Respondent shall further notify the board in writing within
28 ten (10) days following the next calendar month during which respondent practices as a Pharmacy

1 Technician in California for the minimum of hours. Any failure to timely provide such
2 notification(s) shall be considered a violation of probation.

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

7 **13. Violation of Probation**

8 If respondent has not complied with any term or condition of probation, the board shall
9 have continuing jurisdiction over respondent, and the board shall provide notice to respondent
10 that probation shall automatically be extended, until all terms and conditions have been satisfied
11 or the board has taken other action as deemed appropriate to treat the failure to comply as a
12 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
13 board or its designee may post a notice of the extended probation period on its website.

14 If respondent violates probation in any respect, the board, after giving respondent notice
15 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
16 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
17 probation, or the preparation of an accusation or petition to revoke probation is requested from
18 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
19 probation shall be automatically extended until the petition to revoke probation or accusation is
20 heard and decided.

21 **14. Completion of Probation**

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

24 **15. Drug and Alcohol Testing**

25 Respondent, at her own expense, shall participate in testing as directed by the board or its
26 designee for the detection of alcohol, controlled substances, and dangerous drugs and/or
27 dangerous devices. Testing protocols may include biological fluid testing (urine, blood),
28 breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its

1 designee. All testing must be pursuant to an observed testing protocol, unless respondent is
2 informed otherwise in writing by the board or its designee. Respondent may be required to
3 participate in testing for the entire probation period and frequency of testing will be determined
4 by the board or its designee.

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

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

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

27 Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its
28 designee may require respondent to timely provide documentation from a licensed practitioner

1 authorized to prescribe the detected substance demonstrating that the substance was administered
2 or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such
3 documentation shall be provided by respondent within ten (10) days of being requested.

4 Any of the following shall be considered a violation of probation and shall result in
5 respondent being immediately suspended from practice as a Pharmacy Technician until notified
6 by the board in writing that she may resume practice: failure to timely complete all of the steps
7 required for enrollment/registration with the drug testing vendor, including making arrangements
8 for payment; failure to timely commence drug testing protocols; failure to contact the drug testing
9 vendor as required to determine testing date(s); failure to test as required; failure to timely supply
10 documentation demonstrating that a detected substance was taken pursuant to a legitimate
11 prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or
12 of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the
13 detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In
14 the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a
15 controlled substance or dangerous drug absent documentation that the detected substance was
16 taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee
17 shall inform respondent of the suspension and inform her to immediately leave work, and shall
18 notify respondent's employer(s) and work site monitor(s) of the suspension.

19 During any such suspension, respondent shall not enter any pharmacy area or any portion of
20 the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug
21 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
22 any area where dangerous drugs and/or dangerous devices or controlled substances are
23 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
24 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
25 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
26 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
27 dangerous devices and controlled substances.
28

1 During any such suspension, respondent shall not engage in any activity that requires the
2 professional judgment of and/or licensure as a Pharmacy Technician. Respondent shall not direct
3 or control any aspect of the practice of pharmacy, or of the manufacturing, distributing,
4 wholesaling, or retailing of dangerous drugs and/or dangerous devices.

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

8 **16. Notification of Departure**

9 Prior to leaving the probationary geographic area designated by the board or its designee for
10 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
11 writing of the dates of departure and return. Failure to comply with this provision shall be
12 considered a violation of probation.

13 **17. Abstain from Drugs and Alcohol**

14 Respondent shall completely abstain from the possession or use of alcohol, controlled
15 substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated
16 paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a
17 necessary part of treatment. Respondent shall ensure that she is not in the same physical location
18 as individuals who are using illicit substances even if respondent is not personally ingesting the
19 drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled
20 substances, or their associated paraphernalia for which a legitimate prescription has not been
21 issued as a necessary part of treatment, or any physical proximity to persons using illicit
22 substances, shall be considered a violation of probation.

23 **18. Prescription Coordination and Monitoring of Prescription Use**

24 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
25 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
26 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
27 history with the use of alcohol, controlled substances, and/or dangerous drugs, and who will
28 coordinate and monitor any prescriptions for respondent for dangerous drugs and/or dangerous

1 devices, controlled substances or mood-altering drugs. The approved practitioner shall be
2 provided with a copy of the board's Accusation and decision. A record of this notification must
3 be provided to the board or its designee upon request. Respondent shall sign a release authorizing
4 the practitioner to communicate with the board or its designee about respondent's treatment(s).
5 The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to
6 the board on a quarterly basis for the duration of probation regarding respondent's compliance
7 with this condition. If any substances considered addictive have been prescribed, the report shall
8 identify a program for the time limited use of any such substances. The board or its designee may
9 require that the single coordinating physician, nurse practitioner, physician assistant or
10 psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.
11 Should respondent, for any reason, cease supervision by the approved practitioner, respondent
12 shall notify the board or its designee immediately and, within thirty (30) days of ceasing
13 supervision, submit the name of a replacement physician, nurse practitioner, physician assistant,
14 or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to
15 timely submit the selected practitioner or replacement practitioner to the board or its designee for
16 approval, or to ensure the required quarterly reporting thereby, shall be considered a violation of
17 probation.

18 If at any time an approved practitioner determines that respondent is unable to practice
19 safely or independently as a Pharmacy Technician, the practitioner shall notify the board or its
20 designee immediately by telephone and follow up by written letter within three (3) working days.
21 Upon notification from the board or its designee of this determination, respondent shall be
22 automatically suspended and shall not resume practice as a Pharmacy Technician until notified by
23 the board or its designee that practice may be resumed.

24 During any suspension, respondent shall not enter any pharmacy area or any portion of the
25 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
26 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
27 any area where dangerous drugs and/or dangerous devices or controlled substances are
28 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,

1 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
2 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
3 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
4 dangerous devices and controlled substances. Respondent shall not resume practice until notified
5 by the board.

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

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

12 **19. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

13 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
14 attendance at a recognized and established substance abuse recovery support group in California
15 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board
16 or its designee. Respondent must attend the number of group meetings per week or month
17 directed by the board or its designee, which shall typically be at least one per week. Respondent
18 shall continue regular attendance and submit signed and dated documentation confirming
19 attendance with each quarterly report for the duration of probation. Failure to attend or submit
20 documentation thereof shall be considered a violation of probation.

21 Where respondent is enrolled in the PRP, participation as required in a recovery group
22 meeting approved by the PRP shall be sufficient for satisfaction of this requirement. Any
23 deviation from participation requirements for the PRP-approved group shall be considered a
24 violation of probation.

25 **20. Work Site Monitor**

26 Within ten (10) days of the effective date of this decision, respondent shall identify a work
27 site monitor, for prior approval by the board or its designee, who shall be responsible for
28 supervising respondent during working hours. Respondent shall be responsible for ensuring that

1 the work site monitor reports in writing to the board monthly or on another schedule as directed
2 by the board or its designee. Should the designated work site monitor suspect at any time during
3 the probationary period that respondent has abused alcohol or drugs, he or she shall notify the
4 board immediately.

5 In the event of suspected abuse, the monitor shall make at least oral notification within one
6 (1) business day of the occurrence, and shall be followed by written notification within two (2)
7 business days of the occurrence. If, for any reason, including change of employment, respondent
8 is no longer able to be monitored by the approved work site monitor, within ten (10) days
9 respondent shall designate a new work site monitor for approval by the board or its designee.
10 Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure
11 monthly reports are submitted to the board by the monitor, shall be considered a violation of
12 probation.

13 Within thirty (30) days of being approved by the board or its designee, the work site
14 monitor shall sign an affirmation that he or she has reviewed the terms and conditions of
15 respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at
16 least:

- 17 1) Have regular face-to-face contact with respondent in the work environment, at least
18 once per week or with greater frequency if required by the board or its designee;
- 19 2) Interview other staff in the office regarding respondent's behavior, if applicable; and
- 20 3) Review respondent's work attendance.

21 The written reports submitted to the board or its designee by the work site monitor shall
22 include at least the following information: respondent's name and license number; the monitor's
23 name, license number (if applicable) and work site location; the date(s) the monitor had face-to-
24 face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on
25 any changes in respondent's behavior or personal habits; notes on any indicators that may lead to
26 substance abuse; and the work site monitor's signature.

27 Respondent shall complete the required consent forms and sign an agreement with the work
28 site monitor and the board to allow the board to communicate with the work site monitor.

1 **ACCEPTANCE**

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Christopher J. Whelton. I understand the stipulation and the effect
4 it will have on my Pharmacy Technician. I enter into this Stipulated Settlement and Disciplinary
5 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
6 of the Board of Pharmacy.

7
8 DATED: _____

9 ERIKA C. DAY
Respondent

10 I have read and fully discussed with Respondent Erika C. Day the terms and conditions and
11 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
12 form and content.

13 DATED: _____

14 CHRISTOPHER J. WHELTON
Attorney for Respondent

15
16 **ENDORSEMENT**

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Board of Pharmacy.

19
20 DATED: _____

Respectfully submitted,

21 ROB BONTA
Attorney General of California
22 GREGORY J. SALUTE
Supervising Deputy Attorney General

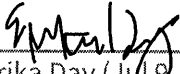
23
24 CRAIG S. MENCHIN
Deputy Attorney General
25 *Attorneys for Complainant*

26
27 SD2021800144
35238777
28

1 **ACCEPTANCE**

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3 discussed it with my attorney, Christopher J. Whelton. I understand the stipulation and the effect
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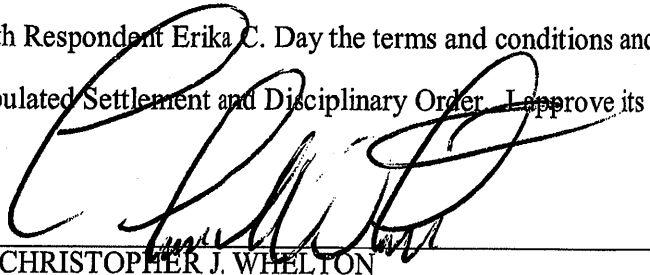
7
8 DATED: 7/9/21


Erika Day (Jul 9, 2021 16:04 PDT)

9 ERIKA C. DAY
Respondent

10 I have read and fully discussed with Respondent Erika C. Day the terms and conditions and
11 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
12 form and content.

13 DATED: 7/9/21


CHRISTOPHER J. WHELTON
Attorney for Respondent


14
15
16 **ENDORSEMENT**

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Board of Pharmacy.

19 DATED: July 27, 2021

20 Respectfully submitted,

21 ROB BONTA
Attorney General of California
22 GREGORY J. SALUTE
Supervising Deputy Attorney General

23 
24 CRAIG S. MENCHIN
25 Deputy Attorney General
26 Attorneys for Complainant

27 SD2021800144
28 35238777

Exhibit A

Accusation No. 7092

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRAIG S. MENCHIN
Deputy Attorney General
4 State Bar No. 286124
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9437
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

13 In the Matter of the Accusation Against:

Case No. 7092

14 **ERIKA C. DAY**
15 **34851 Sauer Rd.**
Wildomar, CA 92595

ACCUSATION

16 **Pharmacy Technician No. TCH 72583**

17 Respondent.

18
19 **PARTIES**

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 October 17, 2006, the Board issued Pharmacy Technician Number TCH
23 72583 to Erika C. Day (Respondent). The Pharmacy Technician was in full force and effect at all
24 times relevant to the charges brought herein and will expire on May 31, 2022, unless renewed.

25 **JURISDICTION**

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

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4. This Accusation is brought before the Board under the authority of the following

5. Code section 4300, subdivision (a), states, “Every license issued may be suspended or

6. Code 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.

12

7. Code section 482 states:

(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.

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

8. Code section 490 states, in pertinent part, that a board may suspend or revoke a

9. Code section 493 states:

(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 or to suspend or revoke a license or otherwise take disciplinary action against a person who 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

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."

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

10. Code section 4301 states:

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

...

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

...

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

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

....

///

1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1769, subdivision (c), states:

3 When considering the suspension or revocation of a facility or a personal license
4 on the ground that the licensee or the registrant has been convicted of a crime, the
5 board, in evaluating the rehabilitation of such person and his present eligibility for a
6 license will consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

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

21 **COST RECOVERY**

22 13. Code section 125.3 provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.

28 **FIRST CAUSE FOR DISCIPLINE**

(September 28, 2020 Criminal Convictions – DUI on February 22, 2019)

14. Respondent has subjected her registration to disciplinary action under Code sections
490 and 4301, subdivision (l), in that on or about September 28, 2020, in a criminal proceeding
titled *People of the State of California vs. Erika Christine Day, aka Erika Christine Cox*, in
Riverside County Superior Court, Case No. SWF2000153, Respondent was convicted on her plea

1 of guilty of violating Vehicle Code section 23153, subdivision (a) (driving under the influence of
2 alcohol with bodily injury[DUI]), and Vehicle Code section 23153, subdivision (b) (driving a
3 vehicle with a blood alcohol concentration [BAC] of .08 percent or more causing bodily injury),
4 as well as Penal Code section 273A, subdivision (a) (willful harm/child endangerment), all
5 misdemeanors. Respondent further admitted and was found to have violated a sentencing
6 enhancement in that her BAC was .15 percent. As a result of the violations, Respondent was
7 placed on informal probation for four years, and ordered to complete a three-month First Offender
8 Alcohol Program, complete a 180 day alcohol monitoring program through Sentinel Offender
9 Services, enroll in a one-year minimum child abuse treatment course, and pay court fines, fees
10 and penalties.

11 15. The circumstances that led to the convictions are that on February 22, 2019, a
12 highway patrol officer responded to a traffic collision whereupon arrival, he observed a vehicle
13 overturned. His investigation revealed that Respondent had struck a parked vehicle which caused
14 her vehicle to overturn. Upon contact with Respondent, officers could smell the strong odor of an
15 alcoholic beverage emanating from her breath and person. Respondent admitted to consuming a
16 beer prior to driving. Respondent submitted a preliminary breath sample, which registered at .165
17 percent. Respondent also had her minor child in the vehicle when the collision occurred.
18 Respondent was subsequently transported to a nearby hospital for medical treatment and also
19 provided a blood sample, which was submitted for analysis and returned a BAC of .15 percent.
20 Respondent was then arrested.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Dangerous Use of Alcohol)**

23 16. Respondent has subjected her registration to disciplinary action under Code section
24 4301, subdivision (h), for unprofessional conduct, in that on February 22, 2019, as described in
25 paragraph 15, above, incorporated herein by reference, Respondent used alcoholic beverages to
26 the extent or in a manner as to be dangerous or injurious to herself, to her passengers, and to the
27 public by operating a motor vehicle while impaired.

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THIRD CAUSE FOR DISCIPLINE
(Multiple Alcohol-Related Convictions)

17. Respondent has subjected her registration to disciplinary action under Code section 4301, subdivision (k), for unprofessional conduct, in that on September 28, 2020, as described in paragraph 15, above, incorporated herein by reference, Respondent was convicted of more than one misdemeanor involving the consumption of alcoholic beverages. Specifically, Respondent was convicted on her plea of guilty of DUI causing injury (Veh. Code, § 23153(a)), and driving a vehicle with a BAC of .08 percent or more causing injury (Veh. Code, § 23153(b)), both are misdemeanor charges.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Number TCH 72583, issued to Erika C. Day;
2. Ordering Erika C. Day to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/21/2021

Signature on File

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

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