



California State Board of Pharmacy
 2720 Gateway Oaks Drive, Suite 100
 Sacramento, CA 95833
 Phone: (916) 518-3100 Fax: (916) 574-8614
 www.pharmacy.ca.gov

Business, Consumer Services and Housing Agency
 Department of Consumer Affairs
 Gavin Newsom, Governor



APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES:

Name of Licensee: <u>Anna Clous</u>	Case No. <u>AC 7094</u>
Address of Record: <u>1123 Kirkwood circle</u> <u>Redding, CA 96003</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 7094, I hereby request to surrender my pharmacy technician license, License No. 95613. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Anna Clous

Applicant's Signature

3/15/23

Date

Anna Clous

Applicant's Printed Name

956013

Applicant's License Number

Executive Officer's Approval

Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 518-3100, 2720 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

ANNA MARIE CLOUS, Respondent

Pharmacy Technician Registration No. TCH 95613

Agency Case No. 7094

OAH No. 2021050756

NOTICE OF DENIAL OF RECONSIDERATION BY OPERATION OF LAW

NOTICE TO ALL PARTIES:

Complainant timely submitted a Petition for Reconsideration to the Board of Pharmacy. No action having been taken by the board on the petition before the Decision and Order took effect, pursuant to Government Code section 11521, the petition is deemed denied by operation of law.

On October 6, 2021, the Board issued an order staying the effective date of the Decision until 5:00 p.m. on October 17, 2021, to allow it time to review the Complainant's petition for reconsideration.

The Decision and Order, which became effective on October 17, 2021, at 5:00 p.m., is the Board of Pharmacy's final decision in this matter.

Date: October 19, 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 written in a cursive style with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ANNA MARIE CLOUS, Respondent

Pharmacy Technician Registration No. TCH 95613

Agency Case No. 7094

OAH No. 2021050756

ORDER STAYING EFFECTIVE DATE OF DECISION

Complainant timely requested reconsideration of the decision in the above-entitled matter pursuant to section 11521 of the Government Code. In order to allow the board additional time to consider the petition, in accordance with the provisions of section 11521 of the Government Code,

IT IS HEREBY ORDERED that the effective date of the Decision and Order, in the above-entitled matter is stayed until 5 p.m. on October 17, 2021.

It is so ORDERED on October 6, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ANNA MARIE CLOUS, Respondent

Pharmacy Technician Registration No. TCH 95613

Agency Case No. 7094

OAH No. 2021050756

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 October 7, 2021.

It is so ORDERED on September 7, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ANNA MARIE CLOUS, Respondent

Agency Case No. 7094

OAH Case No. 2021050756

PROPOSED DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 21, 2021, in Sacramento, California.

Jeff Stone, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Anna Marie Clous (respondent) was present and represented herself.

Evidence was received, the record closed, and the matter submitted for decision on June 21, 2021.

FACTUAL FINDINGS

1. On December 16, 2009, the Board issued Pharmacy Technician Registration No. TCH 95613 to respondent. The license will expire on September 30, 2021, unless renewed.

2. On April 5, 2021, complainant, in her official capacity, filed the Accusation against respondent. Complainant seeks to discipline respondent's registration on the grounds that she was convicted of a substantially related crime and consumed alcohol to an extent or in a manner dangerous or injurious to herself and others alleging cause exists to discipline's respondent's registration on the basis of her criminal conviction for driving under the influence of alcohol. Respondent timely appealed. This hearing followed.

Criminal Conviction

3. On July 27, 2020, in Shasta County Superior Court Case No. 20CTR2685, respondent pled no contest to, and was convicted of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a blood alcohol content of 0.08 percent or greater (DUI)), a misdemeanor. Respondent was placed on probation for three years. She was further ordered to serve two days in jail, complete a six-month DUI first offender program and Victim Impact Panel, use an ignition interlock device when driving (for one year), and pay fines and fees.

4. The circumstances underlying this conviction occurred in the early morning hours of February 25, 2020. Officers from the Redding Police Department responded to a Taco Bell location after an employee reported respondent as a suspected drunk driver in the drive-through lane. Upon arrival, the officers found

respondent sitting in her vehicle in a nearby parking lot. An officer approached and made contact with respondent, who admitted to picking up food from the drive-through but asserted she was not going to drive any more.

As respondent was speaking, the officer observed objective signs of intoxication including red watery eyes, an alcoholic odor emanating from her person, and impaired gross motor skills. Respondent stated she had consumed two four-ounce glasses of wine several hours earlier. Respondent was unable to perform on a series of field sobriety tests. A preliminary alcohol screening test measured her blood alcohol content (BAC) at 0.216 and 0.210 percent. A subsequent blood test resulted in a BAC of 0.261 percent.

Respondent's Evidence

5. Respondent is 31 years old. She is married and has a three-year old son. She testified at hearing regarding the circumstances surrounding her arrest and conviction, and her subsequent rehabilitation.

6. On February 25, 2020, after going through the Taco Bell drive-through, respondent began to feel the effects of alcohol. She drove a quarter mile to a nearby parking lot and parked her vehicle. She did not intend to drive any further. At hearing, she explained she was "going through a hard time" that was not alcohol-related, but which is likely why she "ended up drinking that much." She did not provide further specifics regarding her troubles, but acknowledged using alcohol to "mask" the issues rather than deal with them directly.

7. Respondent has complied with her criminal probation to date. She completed 48 hours of the work release program with the Shasta County Sheriff's Office. She also successfully completed a six-month First Offender DUI Program

through the Wright Education Center, and the Victim Impact Panel offered by the court. The Victim Impact Panel included presentations by sheriff's deputies as well as Mothers Against Drunk Driving (MADD), which respondent described as "very moving and sad" as well as "eye-opening and educational."

8. Respondent expressed remorse and took responsibility for her actions. She is grateful she did not hurt herself or others, and noted it was a "huge life lesson." She admitted the wrongfulness of her conduct, calling it a mistake from which she has learned and grown. She talks openly with others about her experience and the dangers of driving under the influence.

9. Respondent no longer consumes alcohol. Her last drink was a glass of wine with her mother approximately six months after her arrest. She attended approximately six Alcoholics Anonymous (AA) meetings prior to the pandemic-related shutdown. She did not continue with AA once the meetings went online. She did not work through the 12-step program or have a sponsor. Today, she has a strong support system, including her husband and extended family, to whom she can turn. She learned a lot about herself over the past year and emerged a much stronger person.

10. Respondent is currently unemployed. Her husband is the sole financial support for their family. They have a mortgage for their home, as well as car and student loans. Respondent loves being a pharmacy technician, and averred she would never report to work intoxicated or steal medications. For the past year, respondent has volunteered at, and served on the board for, Redding Cooperative Preschool, where her son is a student. She will serve as the board secretary for the 2021-2022 school year. If she is able to maintain her registration, she intends to seek employment in the field. She is willing and able to comply with any probationary terms and conditions the Board deems appropriate.

SUPPORT LETTERS

11. Respondent introduced three letters of support. Amanda Carrel is respondent's older sister. She described respondent as "one of the most kind, generous, and thoughtful people [she has] ever known." She is aware of respondent's conviction and asserted it was "completely out of character for [respondent]" and a "brief radical lapse of judgment."

12. Eric Sanderson is a registered pharmacy technician who worked with respondent for four years at Parkside Pharmacy in Sacramento. He described her as "extremely knowledgeable, personable, and committed," and one who "never gave less than 100%" at the pharmacy. Mr. Sanderson was shocked to learn of her DUI, explaining "[t]his lapse in judgment does not align with the behavior of the Anna I know and have worked with closely for several years."

13. Jennifer Sewell is the vice president of the board for Redding Cooperative Preschool, where she has worked alongside respondent. She praised respondent as exceeding the school's expectations by being prompt, attending all monthly parent meetings, participating in all fundraising events, and serving on the committee for the school's Week of the Young Child event. She described respondent as "professional, insightful, devoted, and easy to work with." Ms. Sewell's letter did not indicate whether she was aware of respondent's criminal conviction.

Analysis

SUBSTANTIAL RELATIONSHIP

14. A criminal conviction is substantially related to the qualifications, functions, or duties of a pharmacy technician if it involves driving under the influence

of drugs or alcohol. (Cal. Code Regs., tit. 16, § 1770, subd. (c)(5).) Pharmacy technicians assist pharmacists in all aspects of operating a pharmacy, including removing drugs from stock; counting, pouring, and mixing drugs; placing the drugs into a container; affixing labels to the container; and packaging and repackaging drugs. (Cal. Code Regs., tit. 16, § 1793.2.) Essential qualities include honesty, good judgment, high integrity, accuracy, and attention to detail. The ability to think clearly and without any impairment by alcohol is necessary to the position. Accordingly, her DUI conviction is substantially related to the qualifications, functions, or duties of a pharmacy technician.

APPROPRIATE DISCIPLINE

15. The Board has adopted disciplinary guidelines for consideration when determining the appropriate level of discipline for violations of the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) and regulations adopted pursuant to it. Generally, the guidelines categorize common violations into one of four categories, and specify a minimum and maximum range of recommended discipline for each category. With regard to pharmacy technicians, however, the guidelines recommend revocation as typically being the appropriate penalty when grounds for discipline exist. If revocation is not imposed, the guidelines recommend that a Category III level of discipline be imposed.

16. The Board has adopted Disciplinary Guidelines for consideration when determining the appropriate discipline to impose for a registrant's violation of the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.). (Cal. Code Regs., tit. 16, § 1760.) The Disciplinary Guidelines categorize different violations into one of four categories, and specify a recommended minimum and maximum discipline for each category. Respondent's alleged violations constitute "Category III" violations with a

recommended discipline range from a minimum of revocation stayed, 90-day actual suspension, probation for three to five years, and all standard terms and the appropriate optional terms, to a maximum of revocation.

17. Factors relevant to determining the appropriate level of discipline include: (1) actual or potential harm to the public; (2) prior disciplinary record; (3) number and/or variety of current violations; (4) nature and severity of the acts, offenses or crimes under consideration; (5) evidence of aggravation, mitigation, or rehabilitation; (6) compliance with the criminal sentence imposed and overall criminal record; and, (7) time passed since the acts or offenses.

18. Respondent was convicted of a single DUI on July 27, 2020, with the underlying conduct occurring on February 25, 2020. Aggravating factors include her BAC was nearly three times the legal limit for driving, her conduct posed a significant danger to the public and herself, and she remains on criminal probation through July 2023. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [an accurate determination of one's rehabilitation necessarily requires a period of evaluation during which she is not on criminal probation].)

19. In mitigation, respondent has been registered with the Board for more than 10 years without incident. While she committed two separate violations of the Pharmacy Law, they are based on the same underlying content. She has complied with all the terms of her criminal probation, and has no other criminal history. Respondent expressed sincere remorse and has taken full responsibility for her actions. She has complied with all terms of her criminal probation, which included completion of a First Offender DUI Program and Victim Impact Panel. She has almost one year of sobriety and has a strong support network of friends and family.

20. Considering the evidence as a whole, and in light of the Disciplinary Guidelines, respondent presented sufficient evidence of rehabilitation to demonstrate her continued fitness to perform the duties of a registered pharmacy technician, on a probationary basis. Such evidence also established that an actual suspension of her registration for any period of time would serve no public protection purpose, but would be unduly punitive. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768 [“Administrative proceedings to . . . impose discipline on a professional license are noncriminal and not penal; they are not intended to punish the licensee, but rather to protect the public”].) Therefore, respondent’s pharmacy technician registration should be placed on probation and subject to appropriate terms and conditions to ensure public protection.

Costs of Enforcement

21. Complainant has requested costs of enforcement in the total amount of \$7,230 pursuant to Business and Professions Code section 125.3. This amount consists entirely of costs incurred by the Office of the Attorney General and billed to the Board. At hearing, complainant introduced a Certification of Prosecution Costs: Declaration of Jeff Stone. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General broken down as follows: 31 attorney hours at the hourly rate of \$220; 4 paralegal hours at the hourly rate of \$205. These costs of enforcement are reasonable as explained further in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the allegations contained in the Accusation by clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) "Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189.)

2. The Board may discipline a pharmacy technician registration if the technician has engaged in unprofessional conduct, which includes, but is not limited to, "the conviction of a crime substantially related to the qualifications, functions, and duties of a [registrant] under this chapter." (Bus. & Prof. Code, §§ 490 & 4301, subd. (l).) As set forth in Factual Finding 14, respondent's criminal conviction for DUI is substantially related to the qualifications, functions, and duties of a registered pharmacy technician. Therefore, cause exists to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (l).

3. Unprofessional conduct also includes "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 contact with safety to the public the practice authorized by the license." (Bus. & Prof. Code, § 4301, subd. (h).) Respondent used alcoholic beverages in a dangerous or injurious manner when she drove her car after consuming alcohol on February 25, 2020. (See, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770 [discussing the dangers of driving while under

the influence of alcohol].) Therefore, cause exists to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (h).

4. When all the evidence is considered, respondent demonstrated her continued ability to perform her duties as a pharmacy technician in a manner consistent with public health, safety, and welfare, under a probationary license, for the reasons discussed in Factual Findings 15 through 20. Therefore, her registration shall be placed on probation, subject to the terms and conditions specified in the Order below.

5. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

6. As set forth in Factual Finding 21, complainant enforcement costs of \$7,320 are reasonable in light of the issues raised, the legal work performed, and the evidence presented in this matter. Respondent had a subjective good faith belief in the merits of her position, and successfully challenged the proposed discipline of revocation. The evidence also established respondent's limited ability to pay. When all the factors set forth in *Zuckerman* are considered, the costs should be reduced to

\$3,500. Respondent may pay these costs over time according to a payment plan approved by the Board or its designee.

ORDER

Pharmacy Technician Registration Number TCH 95613 issued to respondent Anna Marie Clous is REVOKED; however, the revocation is STAYED, and respondent's registration is placed on PROBATION for three years upon the following terms and conditions:

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty, or nolo contendere, 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, she shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

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

3. Interview with the Board. Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff. Respondent shall timely cooperate with the Board's inspection program and with its monitoring and investigation of her compliance with the terms and conditions of her probation, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of

probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in Case Number 7094 and the terms, conditions, and restrictions imposed on her by the decision, as follows:

- Within 30 days of the effective date of this decision, and within 10 days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of each of her employer(s), and the name(s) and telephone number(s) of all of her direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. She shall also include the reason(s) for leaving the prior employment. She shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of her employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the Board or its designee, concerning her work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

- Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, she shall cause (a) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in Case Number 7094, and terms and conditions imposed thereby. If one person serves in more than one role described

in (a), (b), or (c), the acknowledgment shall so state. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the Board in writing within 15 days of the change acknowledging that he or she has read the decision in Case Number 7094, and the terms and conditions imposed thereby.

- If respondent works for or is employed by or through an employment service, she must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in Case Number 7094, and the terms and conditions imposed thereby in advance of her commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

- Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through an employment service, she shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read the decision in Case Number 7094, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the Board 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 registration is a requirement or criterion for employment, whether 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 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 prosecution in the amount of \$3,500. She 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 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 registration with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician registration shall be considered a violation of probation.

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication her registration shall be subject to all terms and conditions of this probation not previously satisfied.

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

Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall registration, including any indicia of registration not previously provided to the Board within 10 days of notification by the Board that the surrender is accepted if not already provided.

Respondent may not reapply for any registration or license from the Board for three years from the effective date of the surrender. She shall meet all requirements applicable to the registration or license sought as of the date the application for that registration or license is submitted to the Board, including any outstanding costs.

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

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

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), she shall notify the Board in writing within 10 days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which she will resume practice at the required level. She shall further notify the Board in writing within 10 days following the next calendar month during which she practices as a pharmacy technician in California for the minimum number of hours.

Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

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

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

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

15. Criminal Probation/Parole Reports. Within 10 days of the effective date of this decision, or within 10 days of the issuance or assignment/replacement of same, whichever is earlier, respondent shall provide the board or its designee in writing: a copy of the conditions of any criminal probation/parole applicable to respondent; and the name and contact information of any probation, parole or similar supervisory officer assigned to respondent. Respondent shall provide a copy of all criminal probation/parole reports to the board within 10 days after such report is issued. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

16. Clinical Diagnostic Evaluation. Within 30 days of the effective date of this decision, and on a periodic basis thereafter if required by the Board or its designee, respondent shall undergo, at her own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the Board or its designee. The approved evaluator shall be provided with a copy of the Board's Accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the Board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board or its designee that practice may resume.

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

DATE: July 26, 2021



TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 JEFF STONE
Deputy Attorney General
4 State Bar No. 155190
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7726
Facsimile: (916) 327-8643
7 E-mail: Jeff.Stone@doj.ca.gov
Attorneys for Complainant
8
9

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

14 In the Matter of the Accusation Against:

Case No. 7094

15 **ANNA MARIE CLOUS**

16 1123 Kirkwood Cr.
17 Redding, CA 96003

18 **Pharmacy Technician License No. TCH 95613**

19 **ACCUSATION**

20 Respondent.
21

22 **PARTIES**

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

25 2. On or about December 16, 2009, the Board of Pharmacy issued Pharmacy Technician
26 License Number TCH 95613 to Anna Marie Clous (Respondent). The Pharmacy Technician
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on September 30, 2021, unless renewed.

JURISDICTION

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

4. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

....

(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 of the Code 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.

///

///

///

1 **STATUTORY PROVISIONS**

2 6. Section 481 of the Code states:

3 (a) Each board under this code shall develop criteria to aid it, when considering
4 the denial, suspension, or revocation of a license, to determine whether a crime is
5 substantially related to the qualifications, functions, or duties of the business or
6 profession it regulates.

7 (b) Criteria for determining whether a crime is substantially related to the
8 qualifications, functions, or duties of the business or profession a board regulates
9 shall include all of the following:

10 (1) The nature and gravity of the offense.

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

12 (3) The nature and duties of the profession in which the applicant seeks
13 licensure or in which the licensee is licensed.

14

15 7. Section 482 of the Code states:

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

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

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

20 Each board shall take into account all competent evidence of rehabilitation
21 furnished by the applicant or licensee.

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

26 9. Section 493 of the Code states:

27 Notwithstanding any other provision of law, in a proceeding conducted by a
28 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.

1 As used in this section, “license” includes “certificate,” “permit,” “authority,”
2 and “registration.”

3 10. Section 4301 of the Code states:

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

8

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

14

15 (l) The conviction of a crime substantially related to the qualifications, functions,
16 and duties of a licensee under this chapter. The record of conviction of a violation of
17 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
18 regulating controlled substances or of a violation of the statutes of this state regulating
19 controlled substances or dangerous drugs shall be conclusive evidence of
20 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
21 evidence only of the fact that the conviction occurred. The board may inquire into the
22 circumstances surrounding the commission of the crime, in order to fix the degree of
23 discipline or, in the case of a conviction not involving controlled substances or
24 dangerous drugs, to determine if the conviction is of an offense substantially related to
25 the qualifications, functions, and duties of a licensee under this chapter. A plea or
26 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
27 conviction within the meaning of this provision. The board may take action when the
28 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. . .

20 **REGULATORY PROVISIONS**

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

22 (c) When considering the suspension or revocation of a facility or a personal
23 license on the ground that the licensee or the registrant has been convicted of a crime,
24 the board, in evaluating the rehabilitation of such person and his present eligibility for
25 a license will consider the following criteria:

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

27 (2) Total criminal record.

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

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

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

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

2 For the purpose of denial, suspension, or revocation of a personal or facility
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
4 Professions Code, a crime or act shall be considered substantially related to the
5 evidences present or potential unfitness of a licensee or registrant to perform the
6 functions authorized by his license or registration in a manner consistent with the public
7 health, safety, or welfare.

8 **COST RECOVERY**

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

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Criminal Conviction)

17 14. Respondent has subjected her Pharmacy Technician License to discipline under
18 sections 490 and 4301, subdivision (I) of the Code in that she was convicted of crimes that are
19 substantially related to the qualifications, duties, and functions of a pharmacy technician. The
20 circumstances are as follows:

21 a. On or about July 27, 2020, in a criminal proceeding entitled *People of the State*
22 *of California v. Anna Marie Clous, et al.*, in the Superior Court of California, County of Shasta,
23 case number 20CTR2685, Respondent was convicted on her plea of nolo contendere to violating
24 Vehicle Code section 23152(B), in that she willfully and unlawfully, while having a 0.08% and
25 more by weight of alcohol in her blood, drove a motor vehicle.

26 b. As a result of the conviction, Respondent was ordered to serve 48 hours in jail,
27 pay fines and fees, drive only a vehicle with an ignition interlock device for one year, and comply
28 with probation terms.

c. The facts that led to the convictions are that on or about February 25, 2020, at
approximately 1:09 a.m., the Redding Police Department received a telephone call from a Taco

1 Bell employee reporting encountering a suspected drunk driver at the drive-thru. Officers from
2 the Redding Police Department arrived, and Respondent was that driver. The officers observed
3 objective symptoms of alcohol intoxication and respondent failed field sobriety tests.
4 Respondent's preliminary alcohol screening tests resulted in a blood alcohol content of 0.216%
5 and 0.210%; the result of her subsequent blood test was 0.261% blood alcohol content by weight.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct – Dangerous Use of Alcohol)

8 15. Respondent has subjected her Pharmacy Technician License to discipline under
9 section 4301, subdivision (h) of the Code for unprofessional conduct in that her conduct, as
10 described in paragraph 14 above, involved the use of alcoholic beverages to the extent or in a
11 manner as to be dangerous or injurious to herself, to a person holding a license under this chapter,
12 or to any other person or to the public.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician License Number TCH 95613, issued
17 to Anna Marie Clous;
- 18 2. Ordering Anna Marie Clous to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 4/5/2021

Signature on File

24 ANNE SODERGREN
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

SA2021300348
34823529