

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

**In the Matter of the Accusation Against:**

**JUSTIN RICHARD SUTER, Respondent**

**Pharmacy Technician Registration No. TCH 160399**

**Agency Case No. 7302**

**OAH No. 2022110481**

**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 April 19, 2023.

It is so ORDERED on March 20, 2023.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.  
Board President

**BEFORE THE  
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**In the Matter of the Accusation Against:**

**JUSTIN RICHARD SUTER, Respondent**

**Pharmacy Technician Registration No. TCH 160399**

**Respondent.**

**Agency Case No. 7302**

**OAH No. 2022110481**

**PROPOSED DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on January 19, 2023.

Craig S. Menchin, Deputy Attorney General, appeared and represented complainant, Anne Sodergren, Executive Officer of the California Board of Pharmacy (board).

Justin Richard Suter, respondent, appeared and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 19, 2023.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On June 13, 2017, the board issued to respondent Pharmacy Technician Registration Number TCH 160399, which is set to expire on March 31, 2023, unless renewed.

2. On September 26, 2022, complainant, while acting in her official capacity as the Executive Officer for the board, filed an accusation against respondent. The accusation was based on respondent's criminal convictions and his dangerous use of alcohol as set forth in the following Factual Findings. Complainant referenced respondent's 2019 conviction as a disciplinary consideration. Complainant also seeks costs of investigation and enforcement of this matter.

3. Respondent timely requested a hearing, and this hearing ensued.

### **Respondent's Convictions**

4. On March 30, 2022, in the Superior Court of California, County of Orange, Case No. 21NM09955, respondent was convicted by his plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (DUI); Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or higher; Vehicle Code section 2301, subdivision (a), reckless driving, all misdemeanors; and Vehicle Code section 23154, subdivision (a), driving a vehicle while having a BAC of 0.01 percent or greater while on probation for

DUI, an infraction. Respondent was sentenced to 120 days in county jail and placed on three years' summary probation, under terms and conditions that included payment of fines and completion of an 18-month Multiple Offender Alcohol program and Victim Impact Counseling program. Respondent's probation is scheduled to end in March 2025.

5. The circumstances of respondent's March 30, 2022, convictions are found in a report that was prepared by the California Highway Patrol (CHP), and admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.<sup>1</sup> On June 13, 2021, at about 4:55 p.m., an officer was on duty near Fullerton, California, and was merging onto the freeway when he observed a vehicle drive pass him at a high rate of speed. The officer followed the driver, who nearly caused several collisions and was clocked at a rate of speed of 105 miles per hour (mph) in a 65 mph zone. The officer stopped the vehicle, and the driver was identified as respondent, who had a strong odor of an alcoholic beverage and watery eyes. Respondent admitted to consuming two beers, but said he drank

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<sup>1</sup> In *Lake*, the California Supreme Court concluded that direct observations memorialized in a police officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The court further concluded that admissions by a party memorialized in such a report were admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the court held that other hearsay statements set forth in the police officer's report could be used to supplement or explain other evidence, but they were not sufficient, by themselves, to support a factual finding, unless the hearsay evidence would be admissible over objection in civil actions.

them the night before. The officer conducted a records check and discovered that respondent was on probation for a DUI conviction in 2019. A preliminary screening test showed respondent's BAC was 0.093 percent, and he was arrested for DUI. His subsequent breathalyzer tests registered his BAC at 0.096 percent and 0.090 percent.

6. On August 20, 2019, in the Superior Court of California, County of Los Angeles, Case No. 9WC03941, respondent was convicted by his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or higher, a misdemeanor. Respondent was ordered to perform 10 days of community labor, and he was placed on three years' summary probation, under terms and conditions that included payment of fines and fees, and completion of an 18-month treatment or counseling program, a three-month DUI program, the Mothers Against Drunk Driving Victim Impact Program, and the Hospital and Morgue Program.

7. The circumstances of respondent's August 20, 2019, conviction are found in a report that was prepared by the California Highway Patrol (CHP), and admitted pursuant to *Lake, supra*. On March 28, 2019, respondent was involved in a traffic collision while driving on the freeway in or near Walnut, California. During the investigation, the officer observed respondent had an odor of an alcoholic beverage emitting from his breath and person. Respondent admitted to drinking beer earlier in the day. The officer determined respondent was driving under the influence, and he was arrested for DUI. Respondent's breathalyzer tests registered his BAC at 0.14 percent and 0.15 percent.

8. As a result of the August 20, 2019, conviction, the board issued respondent Citation No. CI 2018 83819 and a fine in the amount of \$750, which respondent paid in full. Complainant argues that respondent's August 20, 2019,

conviction, and the resulting citation issued by the board, should be considered in determining the degree of discipline to be imposed on respondent.

### **Testimony of Elham Delune, Pharm.D.**

9. The following is a summary of the testimony of Elham Delune: She has been employed as an inspector with the board since 2016 and became a licensed pharmacist in 2010. Her duties as an inspector include investigating complaints alleging violations of pharmacy law, inspecting pharmacies and wholesalers, conducting interviews, and working alongside other government agencies on investigations. Prior to working with the board, she was practicing as a staff pharmacist and a pharmacist in charge at several pharmacies.

10. In this case, Dr. Delune reviewed the board's investigation report, respondent's records of his convictions, and the accusation. She assessed that respondent's two convictions for DUI showed he had poor judgment, and he could have potentially harmed himself and/or others. She testified that respondent's convictions relate to his work because pharmacy technicians work in a pharmacy setting where they have to be honest and trustworthy since they have access to dangerous drugs, patient records, and credit card information. Pharmacy technicians need to follow the laws and regulations both inside and outside the pharmacy setting. If a pharmacy technician fails to obey the laws such as abusing substances, he or she could potentially input the wrong medications in the pharmacy system and give the wrong drugs to patients. The laws are in place to protect patients and respondent's actions show that he lacks good judgment.

## **Testimony of Respondent**

11. The following is a summary of the testimony of respondent: He is 26 years old. He was 23 years old when he was convicted of his first DUI and 25 years old at the time of his second DUI. He does not want to argue or deny his convictions. He understands what he did was irresponsible and immature. He also understands the recency and proximity of his convictions, and that it does not seem he is of "any kind of asset to public safety." However, he has not had an alcoholic beverage since he was arrested in June 2021. After his 2022 convictions, he was placed under house arrest for 59 days where he took breathalyzer tests at 5:30 a.m. and 4:30 p.m. each day. He regularly attends Alcoholics Anonymous (AA) as part of his court-ordered program. He no longer engages in such risky behaviors.

12. Respondent testified that he completed his Bachelor of Science degree in Chemistry from the University of La Verne. After he graduated, he conducted research for a pharmaceutical company for a year and a half. He was recently accepted into graduate school to earn a doctoral degree in chemistry at the University of Wisconsin and Purdue University. He is waiting to hear if he has been accepted for the same program at the University of Southern California. He plans to attend one of these programs in the fall. He will receive an annual stipend of \$26,000 for which he will be expected to do research for the university and be a teaching assistant for other courses. He hopes that his research will help to design a non-addictive pain killer and non-addictive forms of anxiety medications. He will not be permitted to have other employment while he is in his doctoral program. After he completes his Doctorate in Chemistry, he does not intend to continue his employment as a pharmacy technician.

13. Respondent testified that if he were to have to pay costs to the board tomorrow, he would not be able to pay. His net income from his employment as a

pharmacy technician at CVS in 2022 was approximately \$27,000. He currently works at B Braun Medical as a lab technician where he earns \$27 per hour. He Ubers to and from work at a cost of about \$200 each week. His contract with B Braun Medical terminates in July 2023. He plans to begin his doctoral program in August 2023 where his annual income will be limited to \$26,000 for several years.

### **Other Supporting Evidence Submitted by Respondent**

14. Respondent submitted the following other supporting evidence:

15. In a lengthy letter of support by Phong Mai, R.Ph., dated December 26, 2022, she indicated that she has been a pharmacist since 2010 and a pharmacy manager since 2011. She has been respondent's manager at CVS in Tustin, California, since 2021. She expressed that respondent is professional and ethical, and he was honest with her about his DUI convictions. She stated that respondent had excellent technical skills as a pharmacy technician, and he was compassionate with patients who have pulled her aside to express their gratitude for how he treated them. She is hoping that her letter provides "clarity as to who Justin is as a pharmacy technician," and she urged the board to not suspend or revoke his registration.

16. A notice of completion by Corrective Solutions SEC Monitoring and Case Management, dated November 15, 2022, indicated respondent completed his confinement period of 59 days, as a condition of his supervised electronic confinement monitoring program.

17. A copy of respondent's 2021 W-2 indicating that his taxable wages from CVS were \$11,726.86.



18. A copy of respondent's November 2022 pay stub from CVS indicating that his net income in 2022 was \$27,091.03.

## **Costs**

19. The Deputy Attorney General who prosecuted the case executed a declaration regarding the costs of prosecution. Attached to his declaration is a document entitled "Matter Time Activity by Professional Type," which identified the tasks performed, the time spent on each task, and the hourly rate. Complainant established that the reasonable cost of prosecution was \$7,296.25.

## **LEGAL CONCLUSIONS**

### **The Purpose of Disciplinary Proceedings**

1. The purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

### **Burden and Standard of Proof**

2. Complainant bears the burden of proof of establishing the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 583.)

3. In a disciplinary proceeding, the burden of proof is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

4. In determining the proper standard of proof to apply in administrative license revocation proceedings, courts have drawn a distinction between professional licenses such as those held by doctors, lawyers, and real estate brokers, on the one hand, and nonprofessional or occupational licenses such as those held by food processors and vehicle salespersons, on the other hand. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard of proof applies. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.)

5. An applicant for a professional license must ordinarily satisfy extensive educational and training requirements and then pass a rigorous state administered competency examination. A nonprofessional license typically is issued without the need to demonstrate any specific education or skill and upon the mere showing of good character. The sharp distinction between professional licenses and nonprofessional licenses supports a distinction in the standards of proof needed to revoke these two different types of licenses. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319.)

6. Business and Professions Code section 4038 defines a “pharmacy technician” as “an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties as specified in section 4115.” Business and Professions Code section 4115 sets forth various tasks a pharmacy technician may perform. For example, subdivision (a) provides “a pharmacy technician

may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” A pharmacy technician license may be issued upon showing a minimal level of formal education, training, and experience. (Bus. & Prof. Code, §4202, subd. (a).) Therefore, the preponderance of the evidence standard applies in this proceeding because a pharmacy technician registration is a nonprofessional or occupational license.

7. “‘Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.] . . . The sole focus of the legal definition of “preponderance” in the phrase “preponderance of the evidence” is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314,324-325.) “If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation].” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

## **Applicable Law**

8. Business and Professions Code section 490, subdivision (a), provides, in part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Business and Professions Code section 493 provides, in part:

(a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license 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.

(b)(1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

[¶] . . . [¶]

(A) The nature and gravity of the offense.

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

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

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

[¶] . . . [¶]

(e) This section shall become operative on July 1, 2020.

10. Business and Professions Code section 4300, subdivision (a), provides that every license issued may be suspended or revoked.

11. Business and Professions Code section 4301 states, in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . . [¶]

(h) The administering to oneself, 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 drugs 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.

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

(a) For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation that may be performed under the license type sought or held if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board will consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation that may be performed under the license type sought or held.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

[¶] . . . [¶]

(5) Involve a conviction for driving under the influence of drugs or alcohol.

### **Cause Exists to Impose Discipline on Respondent's Registration**

13. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code sections 490 and 4301, subdivision (l). Complainant established, by a preponderance of the evidence, that on March 30, 2022, respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician. (First Cause for Discipline.)

14. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (k). Complainant established, by a preponderance of the evidence, that on March 30, 2022, and August 20, 2019, respondent engaged in unprofessional conduct by being convicted of multiple misdemeanors involving the consumption of alcoholic beverages. (Second Cause for Discipline.)

15. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (h).



Complainant established, by a preponderance of the evidence, that on June 13, 2021, and March 28, 2019, respondent engaged in unprofessional conduct by using alcoholic beverages to an extent or in a manner that was dangerous and injurious to himself, and to others, when he operated a motor vehicle while significantly impaired by alcohol. (Third Cause for Discipline.)

## **Applicable Law and Guidelines Regarding Rehabilitation**

16. Having found cause to discipline respondent, the issue is rehabilitation. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) "While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . ." (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.) Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue in appropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

17. When considering an individual's rehabilitation from substance abuse, consideration must be given to the nature and extent of that abuse and its impact upon the individual. Through continued abstinence, a substance abuser may arrest the deleterious manifestations of the disease. The requisite length of time required to show meaningful and sustained rehabilitation varies from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

18. Business and Professions Code section 482 states, in part:

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

[¶] . . . [¶]

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

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

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

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

[¶] . . . [¶]

(d) This section shall become operative on July 1, 2020.

19. California Code of Regulations, title 16, section 1769, states, in part:

(c) Suspension or revocation of a license.

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether

the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) Time that has elapsed since commission of the act(s) or offenses.
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

20. The board's Disciplinary Guidelines (Guidelines) state that the board files cases against pharmacy technicians when the violations involve significant misconduct on the part of the licensee. The board believes that revocation is typically the appropriate penalty when grounds for discipline are found to exist. The Guidelines list the following factors to be considered in determining penalties:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence

10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct
16. other licenses held by the respondent and license history of those licenses
17. Uniform Standards Regarding Substances-Abusing Healing Arts Licenses (see Business and Professions Code Section 315)

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

## Evaluation

21. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy technicians have access to confidential personal and financial information of consumers and to highly regulated medications and devices. The board's disciplinary guidelines state that the board files cases against pharmacy technicians where the violations involve significant misconduct on the part of the licensee, and that the board believes that revocation is typically the appropriate penalty when the grounds for discipline involve significant misconduct.

22. In this case, respondent acknowledged the wrongfulness and severity of his DUI convictions. He was forthright when he testified that he did not want to argue or deny his convictions. He described his behavior as immature and irresponsible. He is clearly remorseful for his actions and has a clear understanding of the seriousness of his misconduct. He is cognizant of the concerns of the recency and proximity of his 2019 and 2022 convictions. While he is making progress with his ongoing AA program and completion of his electronically-monitored house arrest, he continues to be on criminal probation through 2025. He is scheduled to begin a doctoral program in chemistry in the fall, and he expressed that has no intention of resuming his work as a pharmacy technician after he completes his doctoral degree. Insufficient time has elapsed to show that respondent has undergone sufficient rehabilitation such that the public will be protected if he retains his license, even on a probationary basis.

23. Based on the above, the appropriate discipline in this case is revocation of respondent's pharmacy technician registration, in order to ensure protection of the public of future harm and to allow respondent more time to continue his efforts of rehabilitation.

## Recovery of Costs

24. Business and Professions Code section 125.3 provides in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . .

25. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided that in order to determine whether the actual costs of investigation and prosecution sought by a regulatory board under a statute substantially identical to Business and Professions Code 125.3 are "reasonable," the agency must decide: (a) Whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

26. Considering the *Zuckerman* factors, costs are reduced to \$1,824.06 because respondent presented a good faith belief in the merits of his position, and he has limited financial ability to pay. He shall be ordered to pay that amount if he ever petitions for reinstatement.

## **ORDER**

1. Respondent Justin Richard Suter's Pharmacy Technician Registration Number TCH 160399 is revoked.

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2. If respondent petitions to have his registration reinstated, and if the board grants his petition, the board may order him to pay the \$1,824.06 in costs as a condition of reinstatement. Respondent shall be permitted to pay these costs pursuant to a payment plan approved by the board. This order does not preclude the board from reducing or waiving these costs.

DATE: February 17, 2023



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings

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

13 In the Matter of the Accusation Against:

Case No. 7302

14 **JUSTIN RICHARD SUTER**  
15 **4649 E. Blue Jay Avenue**  
**Orange, CA 92869**

**ACCUSATION**

16 **Pharmacy Technician Registration No.**  
17 **TCH 160399**

Respondent.

19  
20 **PARTIES**

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

23 2. On or about June 13, 2017, the Board issued Pharmacy Technician Registration  
24 Number TCH 160399 to Justin Richard Suter (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on March 31, 2023, unless renewed.

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1 **JURISDICTION**

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

5 4. Code section 4300, subdivision (a), states, "Every license issued may be suspended or  
6 revoked."

7 5. Code section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

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

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

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

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

20 (1) The applicant or licensee has completed the criminal sentence at issue  
21 without a violation of parole or probation.

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

24 ...

25 (d) This section shall become operative on July 1, 2020.

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

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1           8.     Code section 493 states:

2                 (a) Notwithstanding any other law, in a proceeding conducted by a board within  
3                 the department pursuant to law to deny an application for a license or to suspend or  
4                 revoke a license or otherwise take disciplinary action against a person who holds a  
5                 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.

6                 (b) (1) Criteria for determining whether a crime is substantially related to the  
7                 qualifications, functions, or duties of the business or profession the board regulates  
                shall include all of the following:

8                         (A) The nature and gravity of the offense.

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

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

11                 (2) A board shall not categorically bar an applicant based solely on the type  
12                 of conviction without considering evidence of rehabilitation.

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

15                 ...

16                 (e) This section shall become operative on July 1, 2020.

17           9.     Code section 4301 states:

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

21                 ...

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

27                 ...

28                 (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.

....

### **REGULATORY PROVISIONS**

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

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

(1) Nature and gravity of the act(s) or offenses.

(2) Total criminal record.

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

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

(5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

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

(a) For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation that may be performed under the license type sought or held if to a substantial degree it evidences present or potential unfitness of

an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board will consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation that may be performed under the license type sought or held.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

...

(5) Involve a conviction for driving under the influence of drugs or alcohol.

### **COST RECOVERY**

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

### **FIRST CAUSE FOR DISCIPLINE**

#### **(March 30, 2022 Criminal Convictions for DUI and Reckless Driving on June 13, 2021)**

13. Respondent has subjected his pharmacy technician registration to disciplinary action under Code sections 490 and 4301, subdivision (I), because he was convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensee. On March 30, 2022, in a criminal proceeding entitled *The People of the State of California v. Justin Richard Suter*, in Orange County Superior Court, Case Number 21NM09955, Respondent pled guilty and was convicted of driving under the influence of alcohol (DUI) (Veh. Code, § 23152, subd. (a)), driving a vehicle while having a blood alcohol concentration (BAC) of 0.08 percent and more (Veh. Code, § 23152, subd. (b)), and reckless driving (Veh. Code, § 23103, subd. (a)), all

1   misdemeanors; as well as driving a vehicle while having a BAC of .01 percent or greater while on  
2   probation for DUI (Veh. Code, § 23154, subd. (a)), an infraction. The court sentenced  
3   Respondent to 120 days in county jail and placed Respondent on summary probation for three  
4   years. Respondent was ordered to complete an 18-month Multiple Offender Alcohol program and  
5   the Victim Impact Counseling program, and to pay court fines.

6       14.   The circumstances that led to the March 30, 2022 convictions are that on June 13,  
7   2021, at about 4:55 p.m., a CHP officer who was on duty near Fullerton, California, was merging  
8   onto the freeway when he observed a vehicle driving past his location at a high rate of speed. The  
9   officer followed behind the vehicle and observed the vehicle continue to accelerate and drive  
10   recklessly, while swerving between lanes and nearly causing multiple vehicle collisions. The  
11   officer clocked the vehicle's speed at over 105 mph in a 65 mph zone and initiated an  
12   enforcement stop. The officer made contact with the driver of the vehicle, later identified as  
13   Respondent, and detected the strong odor of an alcoholic beverage emitting from Respondent's  
14   breath and person, and noticed that his eyes appeared watery. During the DUI investigation,  
15   Respondent admitted to consuming two beers, but stated that he drank them the night prior. A  
16   records check revealed that Respondent was on probation for a 2019 DUI, as referenced above.  
17   Respondent complied with a preliminary alcohol screening test which measured his BAC at .093  
18   percent. Respondent was arrested for DUI. During processing, Respondent was administered a  
19   breath test which registered his BAC at .096 and .090 percent, respectively.

## 20                                   **SECOND CAUSE FOR DISCIPLINE**

### 21                                   **(Multiple Alcohol-Related Criminal Convictions)**

22       15.   Respondent has further subjected his pharmacy technician registration to disciplinary  
23   action under Code section 4301, subdivision (k), for unprofessional conduct, because on March  
24   30, 2022, as more fully set forth in paragraphs 13 and 14, above; and on August 20, 2019, as  
25   more fully set forth in paragraph 17, below, incorporated herein by this reference, Respondent  
26   was convicted of multiple misdemeanors involving the consumption of alcoholic beverages.

27   ///

28   ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

3 16. Respondent has further subjected his pharmacy technician registration to disciplinary  
4 action under Code section 4301, subdivision (h), for unprofessional conduct, because on June 13,  
5 2021, as more fully set forth in paragraphs 13 and 14, above; and on March 28, 2019, as more  
6 fully set forth in paragraph 17, below, incorporated herein by this reference, Respondent used  
7 alcoholic beverages to an extent or in a manner that was dangerous and injurious to himself and  
8 the public when he operated a motor vehicle while impaired by alcohol.

9 **DISCIPLINARY CONSIDERATIONS**

10 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
11 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

12 a. On August 20, 2019, in a criminal proceeding entitled *The People of the State*  
13 *of California v. Justin Richard Suter*, in Los Angeles County Superior Court, Case Number  
14 9WC03941, Respondent pled nolo contendere and was convicted of driving a vehicle while  
15 having a blood alcohol content (BAC) of 0.08 percent and more (Veh. Code, § 23152, subd. (b)),  
16 a misdemeanor. The court sentenced Respondent to summary probation for three years, under  
17 certain terms and conditions. Respondent was ordered to perform 10 days of community labor,  
18 participate in an 18-month treatment or counseling program, complete a three-month DUI  
19 program, the Mothers Against Drunk Driving Victim Impact Program, and the Hospital and  
20 Morgue Program, and to pay various court fines, fees and assessments. Respondent had a BAC  
21 of 0.14% and 0.15% and he was involved in a traffic collision in the commission of this DUI.

22 b. As a result of Respondent's August 20, 2019, conviction, the Board issued  
23 Citation Number CI 2018 83819 and a fine in the amount of \$750. Respondent did not contest  
24 the citation and paid the citation in full in resolution of the matter.

25 ///

26 ///

27 ///

28 ///



**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 160399, issued to Respondent Justin Richard Suter;

2. Ordering Respondent Justin Richard Suter to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 9/26/2022

Signature on File

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