

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

In the Matter of the Accusation Against:

BRENNA LYNN TEAGUE, Respondent

Pharmacy Technician Registration No. TCH 129182

Agency Case No. 7409

OAH No. 2023030582

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 September 13, 2023.

It is so ORDERED on August 14, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

BRENNA LYNN TEAGUE, Respondent

Pharmacy Technician Registration No. TCH 129182

Agency Case No. 7409

OAH No. 2023030582

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 5, 2023.

Nicole R. Trama, Deputy Attorney General, appeared and represented complainant, Anne Sodergren, Executive Officer of Board of Pharmacy, Department of Consumer Affairs, State of California (board).

Brenna Lynn Teague, respondent, appeared and represented herself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 6, 2023.

FACTUAL FINDINGS

1. On February 13, 2013, the board issued to respondent Pharmacy Technician Registration Number TCH 129182, which was in full force and effect at all times relevant to this accusation, and will expire on April 30, 2024, unless renewed.

2. The duties of pharmacy technicians¹ are set forth in Business and Professions Code section 4115 and California Code of Regulations, title 16, section 1793.2. Those duties include, but are not limited to, removing the drug or drugs from stock; counting, pouring, or mixing pharmaceuticals; placing the product into a container; affixing the label or labels to the container; and packaging and repackaging pharmaceuticals. Pharmacy technicians also have access to sensitive information, such as patient records. As such, pharmacy technicians must be honest and trustworthy in all that they do.

3. On March 12, 2021², respondent was observed driving her vehicle in such a manner that led a police officer for the Escondido Police Department to believe she

¹ The duties of a pharmacy technician were derived from law and the testimony of Brandon Mutrux, a board inspector.

² The facts regarding respondent's arrest were obtained from a police report admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448. 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

was possibly under the influence of an alcoholic beverage. The officer pulled over respondent's vehicle and contacted respondent, who displayed the objective symptoms of intoxication (red and watery eyes, slurred speech, and the odor of an alcoholic beverage emitting from her breath and person). Respondent denied consuming any alcoholic beverages and later changed her answer, stating she consumed only one beer. As the officer's questioning continued, respondent again changed her answer to two beers. Respondent failed to perform a series of field sobriety tests as demonstrated and was arrested for driving under the influence of an alcoholic beverage. She submitted to a breathalyzer test, which showed a blood alcohol concentration of 0.143 and 0.154 percent.

While respondent was being booked, the officer discovered a small 2x2 bag containing cocaine. Cocaine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. Respondent admitted she knew it was cocaine and said she was holding it for a friend.

4. On September 24, 2021, in the Superior Court of California, County of San Diego, in Case No. CN426013, respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (a), driving under the influence of an

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.

alcoholic beverage. The court ordered respondent to serve three years of summary probation, pay fines and fees, complete a MADD Impact Panel program, and take a three-month first offender program, among other terms and conditions.

5. On February 18, 2022, respondent renewed her pharmacy technician license through the board's online website. One of the questions asked, "Have you been disciplined by a public agency or convicted of a crime since the last renewal cycle?" If respondent had answered "yes" to the question regarding a conviction, the online application would have prompted respondent to send information to the board concerning her conviction. Respondent instead answered, "No." The application indicates that all answers are under the penalty of perjury. Respondent never reported her conviction to the board.³

6. On January 19, 2023, 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 conviction, using alcohol in a dangerous manner, and lying on her renewal application.

7. Respondent timely filed a notice of defense and this hearing followed.

8. Respondent's testimony is summarized as follows: Respondent cares about her job and knows she "made a mistake." She is "only human." She has done "everything [she] can to redeem" herself. She cares about her customers and would be

³ Information concerning respondent's renewal application and the application process was derived from documentary evidence and the testimony of Ann Altamirano, an associate governmental program analyst for the board.

devastated if she could not serve as a pharmacy technician. She has been sober since her arrest in March of 2021 because she was "scared" of losing her job.

Regarding her arrest and conviction, respondent did not dispute that she told the officer she only had two beers but actually had more than that. She was coming from a party and thought she was able to drive. Respondent knows now that was a bad decision. Although she has used cocaine before it has been several years since that time and she no longer uses it. She used to have friends that use cocaine but has not been around them in a "long time." When she left the party, she was going to another location and the cocaine was for a friend. Respondent does not believe she is an alcoholic and although she attended Alcoholics Anonymous and Narcotics Anonymous, she never worked the steps and never had a sponsor. She "mainly liked hearing other people's stories." She has not undergone any inpatient treatment. She has not undergone any outpatient treatment and has not sought therapy for substance abuse. Respondent paid the fines and fees imposed by the court following her conviction and feels like she "did [her] time" and will "never do it again."

Regarding lying on her renewal application, respondent said she knows "it was wrong." Respondent said she kept hitting "yes" then "no" then "yes" trying to decide how to answer the question. She eventually settled on answering "no" because she was afraid of losing her job.

On cross-examination, respondent reiterated that she had not had a "sip of alcohol" since her arrest and emphatically stated, "I don't drink." At that point, complainant's counsel shared a series of photographs respondent had posted to her Instagram account. Every photograph shared depicted respondent in some sort of alcohol-related setting (such as a bar, winery, or party), and in almost every photograph respondent is either holding an alcoholic beverage or had an alcoholic

beverage on the table next to her. All of the photographs were posted between July 2021 and October 2022, and most of the photographs post-date March 2021, when respondent said she stopped drinking. The following is a summary of what was depicted in some of the photographs, and respondent's responses.

- A photograph from July 2021 depicting respondent holding beer in a glass inside a bar – respondent admitted to being in a bar but not drinking.
- A photograph from September 28, 2021 depicting respondent holding a Coors Light in what looks like a river or lakeside area with her feet dipped in the water – respondent said she was not drinking the beer and it was just a "prop."
- A photograph from November 2021 depicting respondent drinking a glass of wine.
- A photograph from November 2021 depicting respondent holding a glass of champagne – respondent admitted she drank that day.
- A photograph from February 2022 depicting respondent at a bar holding a large beer – respondent admitted she was drinking.
- A photograph from March 2022 depicting respondent holding what appeared to be an alcoholic beverage – respondent admitted to drinking a sangria.
- A photograph from March 17, 2022, depicting respondent with a beer directly in front of her – respondent said it was a friend's beer.

- A photograph from March 15, 2022, depicting respondent holding a glass of wine – respondent said she was not drinking.
- A photograph from April 30, 2022, depicting respondent holding a wine glass and drinking wine (holding it to her lips) – respondent admitted to drinking.
- A photograph from April 2022 depicting respondent holding a beer – respondent said she did drink that day.
- A photograph from August 22, 2022, depicting respondent showing her and another woman holding what appears to be an alcoholic beverage – respondent said the drink was not an alcoholic beverage.
- A photograph from October 1, 2022, depicting what looks like a winery and wine tasting event where respondent was holding a glass of wine – respondent said she did not drink the glass of wine.
- A photograph from December 2022 depicting respondent holding what appeared to be an alcoholic beverage – respondent claimed it was a soft drink.
- A photograph from December 2022 depicting a mimosa – respondent said it was her friend's drink.

9. Though respondent admitted in a few instances as noted above that she had consumed an alcoholic beverage, when confronted with her Instagram photos that post-dated her claim of sobriety, she continuously referred to alcoholic beverages in other photos as "props" or said it was a friend's drink, despite the fact that respondent was holding the drink or had it directly in front of her. Respondent then

backpedaled regarding her claim of sobriety, stating she "is on her way" to sobriety, and has "really cut back" on "alcohol" and "partying." Respondent then became defensive and said she "doesn't feel she can't drink" and "it is not a crime to have a glass of wine or beer." Respondent concluded by saying she still did not really "feel" like she lied, perhaps "could have worded it differently," and "we are only human."

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:

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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.

[¶] . . . [¶]

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.⁴

(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

⁴ Health and Safety Code section 11350, subdivision (a), provides that the possession of cocaine is punished by imprisonment in a county jail for not more than one year.

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:

(1) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, governing the practice of pharmacy.

(2) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or any law of

this state, or any other jurisdiction, relating to controlled substances or dangerous drugs.

(3) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, relating to government provided or government supported healthcare.

(4) Involve dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.

(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 respondent was convicted of DUI on September 24, 2021. (First Cause for Discipline.)

14. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (j). Complainant established, by a preponderance of the evidence, that on March 12, 2021, respondent unlawfully possessed cocaine, a Schedule II controlled substance and dangerous drug. (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 March 12, 2021,

respondent engaged in unprofessional conduct by using alcoholic beverages to an extent or in a manner that was dangerous and injurious to herself or others when she operated a motor vehicle while significantly impaired by alcohol. (Third Cause for Discipline.)

16. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (f). Complainant established, by a preponderance of the evidence, that on February 18, 2021, respondent engaged in unprofessional conduct by committing an act of dishonesty when she answered "No" on her renewal application in response to the question that asked whether she had been convicted of a crime since her last renewal. (Fourth Cause for Discipline.)

17. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (g). Complainant established, by a preponderance of the evidence, that on February 18, 2021, respondent engaged in unprofessional conduct by making or signing a document that falsely represented facts for the same reason described above in paragraph 16. (Fifth Cause for Discipline.)

Applicable Law and Guidelines Regarding Rehabilitation

18. 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.)

19. 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.)

20. 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.

21. 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.

22. 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

23. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy technicians have access to confidential sensitive information of consumers and to highly regulated medications and devices.

24. Respondent may or may not have a substance abuse problem, although respondent's use of alcohol (as demonstrated by her conviction and countless photographs posted to her Instagram account) is troubling. And, although respondent complied thus far with what the court has required of her, respondent appears to be engaging in the same pattern of drinking activity (as evidenced by her Instagram posts) that likely led to her conviction in the first place. Respondent also lied about her sobriety, stating at least twice that she had not even had a "sip" of alcohol since her

arrest and had been sober since her arrest. Of course, after being impeached on that issue by her own Instagram postings, respondent doubled down on her lie by stating she "is on her way" to sobriety; "doesn't feel she can't drink"; "it is not a crime to have a glass of wine or beer"; has "really cut back" on "alcohol" and "partying"; and she did not really "feel" like she lied but could have "worded" her testimony differently. These are not the actions or statements of one who has achieved the requisite reformation and regeneration expected to be seen following a conviction for driving under the influence of an alcoholic beverage.

25. What makes respondent's dishonesty worse is the fact that she also lied on her renewal application in 2022. It was not a mistake or oversight. Respondent consciously thought about how to respond; not because she did not understand the question, but because she was worried about how telling the truth would impact her. As complainant's counsel argued in her closing argument, it is quite concerning how comfortable respondent is with lying as a way to achieve an end. Lying to the officer during the stop, lying on her renewal application under penalty of perjury, lying during her initial testimony concerning her sobriety, and then lying again on cross-examination about the same are not the actions of someone who can be trusted to maintain a registration for a position with access to such highly sensitive information and dangerous substances.

26. 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 pursue rehabilitative efforts.

Recovery of Costs

27. 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) . . .

28. 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 \$4,431.25.

29. 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.

30. Considering the *Zuckerman* factors, costs will remain at \$4,431.25 and shall be paid to the board within one year of the effective date of the decision and order in this case. Respondent shall be permitted to pay the costs pursuant to a payment plan, if requested, and payment in full shall be required as a condition precedent to reinstatement.

ORDER

1. Respondent Brenna Lynn Teague's Pharmacy Technician Registration Number TCH 129182 is revoked.

2. Respondent shall pay to the board \$4,431.25 in costs within one year of the effective date of the decision and order. If respondent petitions to have her registration reinstated, and if the board grants her petition, the board may order her to pay the any costs that she has not yet paid as a condition precedent to 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: July 5, 2023



KIMBERLY J. BELVEDERE

Administrative Law Judge

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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. 7409

14 **BRENNA LYNN TEAGUE**
15 **129 Green Avenue**
Escondido, CA 92025

ACCUSATION

16 **Pharmacy Technician License No. TCH**
17 **129182**

Respondent.

18
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, Department of Consumer Affairs.

23 2. On or about February 13, 2013, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 129182 to Brenna Lynn Teague (Respondent). The Pharmacy Technician
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on April 30, 2024, unless renewed.

1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law (Bus. & Prof. Code, § 4000 *et seq.*) and the Uniform Controlled Substances
7 Act (Health & Safety Code, § 11000 *et seq.*).

8 5. Code section 4300, subdivision (a) provides that every license issued by the Board
9 may be suspended or revoked.

10 6. Code section 4300.1 states:

11 The expiration, cancellation, forfeiture, or suspension of a board-issued license
12 by operation of law or by order or decision of the board or a court of law, the
13 placement of a license on a retired status, or the voluntary surrender of a license by a
14 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.

15 **STATUTORY PROVISIONS**

16 7. Code section 490 states:

17 (a) In addition to any other action that a board is permitted to take against a
18 licensee, a board may suspend or revoke a license on the ground that the licensee
19 has been convicted of a crime, if the crime is substantially related to the
20 qualifications, functions, or duties of the business or profession for which the
license was issued.

21 (b) Notwithstanding any other provision of law, a board may exercise any
22 authority to discipline a licensee for conviction of a crime that is independent of
23 the authority granted under subdivision (a) only if the crime is substantially related
to the qualifications, functions, or duties of the business or profession for which
the licensee's license was issued.

24 (c) A conviction within the meaning of this section means a plea or verdict
25 of guilty or a conviction following a plea of nolo contendere. An action that a
26 board is permitted to take following the establishment of a conviction may be
27 taken when the time for appeal has elapsed, or the judgment of conviction has been
28 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.

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8. Code section 4060 states:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

...

9. Code section 4301 states:

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

...

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

(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.

...

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

...

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

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21 10. Health and Safety Code section 11350 provides:

22 (a) Except as otherwise provided in this division, every person who possesses
23 (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of
24 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
25 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
26 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
27 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
28 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment in a county jail for not
more than one year, except that such person shall instead be punished pursuant to
subdivision (h) of Section 1170 of the Penal Code if that person has one or more
prior convictions for an offense specified in clause (iv) of subparagraph (C) of
paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense
requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

. . . .

REGULATORY PROVISIONS

11. 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

1 subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal
2 sentence at issue without a violation of parole or probation or the board determines that
3 the licensee did not make the showing of rehabilitation based on the criteria in
4 subdivisions (b)(1)(A) through (E), the board will apply the following criteria in
5 evaluating the licensee's rehabilitation:

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

7 (2) Total criminal record.

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

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

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

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

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

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

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

25 (1) The nature and gravity of the offense;

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

27 (3) The nature and duties of the practice, profession, or occupation that may
28 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:

(1) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to
violate, any provision of law of this state, or any other jurisdiction, governing the practice
of pharmacy.

(2) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to
violate, any provision of Chapter 13 (commencing with Section 801) of Title 21 of the
United States Code regulating controlled substances or any law of this state, or any other
jurisdiction, relating to controlled substances or dangerous drugs.

(3) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to
violate, any provision of law of this state, or any other jurisdiction, relating to government

1 provided or government supported healthcare.

2 (4) Involve dishonesty, fraud, deceit, or corruption related to money, items,
3 documents, or personal information.

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

5 **COST RECOVERY**

6 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licentiate found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 **DRUGS**

11 14. Cocaine, is a Schedule II controlled substance pursuant to Health and Safety Code
12 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
13 section 4022.

14 **FACTUAL ALLEGATIONS**

15 15. On March 12, 2021, Respondent was stopped by an Escondido Police Department
16 officer after she was observed straddling the lane markers. While in contact with Respondent, the
17 officer observed that Respondent was displaying signs and symptoms of alcohol intoxication,
18 including that her eyes were red, bloodshot, watery, and glassy, that she had slurred speech and
19 that she had an odor of an alcoholic beverage emanating from her person. Respondent initially
20 denied consuming any alcoholic beverages but later admitted to consuming one beer. After
21 further questioning, Respondent admitted to the officer that she consumed two beers. Respondent
22 performed poorly on the field sobriety tests, and was arrested on suspicion of driving under the
23 influence. She submitted to a breath test which resulted in blood alcohol concentration readings
24 of .143 and .154 percent.

25 16. While at the station, Respondent's personal belongings were searched. Inside
26 Respondent's wallet, officers discovered a 2 x 2 "dime bag" containing a white, powdery
27 substance, which the officer recognized as cocaine. The weight of the dime bag was 87 grams.
28 The officer showed the baggie to Respondent and she admitted it was cocaine. Respondent

1 indicated that she was holding the cocaine for a friend and that she does not use cocaine and was
2 not planning on using it. Respondent refused to provide the name of the “friend” that she was
3 holding the cocaine for.

4 17. On or about September 24, 2021, in the case entitled, *People of the State of California*
5 *vs. Brenna Lynn Teague*, San Diego Superior Court Case Number CN426013, Respondent pled
6 guilty to violation of Vehicle Code section 23152, subdivision (a), driving under the influence of
7 alcohol. The stipulated blood alcohol concentration was .14 percent. As part of the plea
8 agreement, a violation of Vehicle Code section 23152, subdivision (b), driving with a blood
9 alcohol concentration of .08% or more, was dismissed.

10 18. As a result of the conviction, on or about September 24, 2021, Respondent was
11 sentenced to serve three years probation, required to pay fines, ordered to complete a three month
12 First Conviction Program, required to complete the MADD Impact Panel program, and ordered to
13 comply with other terms and conditions.

14 19. On or about February 18, 2022, Respondent renewed her pharmacy technician license
15 online through the Board’s website. In response to the question asking: “Have you been
16 disciplined by a public agency or convicted of a crime since the last renewal cycle?,” Respondent
17 answered, “No, since my last renewal, I have not had a license disciplined by another government
18 agency and have not been convicted as defined in Section 490 of the Business and Professions
19 Code, or any violation of the law in this or any other state, the United States, or other country.”
20 Respondent failed to report her DUI conviction to the Board as required.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(September 24, 2021 Criminal Conviction for DUI)**

23 20. Respondent is subject to disciplinary action under Code sections 490 and 4301,
24 subdivision (l), in that on or about September 24, 2021, Respondent was convicted on her plea of
25 guilty of violating Vehicle Code section 23152, subdivision (a), for driving under the influence of
26 alcohol, a misdemeanor conviction that is substantially related to qualifications, functions and
27 duties of a pharmacy technician, as set forth in paragraphs 15 through 19, incorporated herein.

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SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of a Controlled Substance)

21. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), for violation of statutes regulating controlled substances, in that on March 12, 2021, Respondent was found in possession of a controlled substance, cocaine, in violation of Health and Safety Code section 11350 and Business and Professions Code section 4060, as set forth in paragraphs 15 through 19, incorporated herein.

THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol in a Dangerous Manner)

22. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), in that Respondent used alcohol to the extent or in a manner dangerous to herself others when on March 12, 2021, Respondent drove under the influence of alcohol, as set forth in paragraphs 15 through 19, incorporated herein.

FOURTH CAUSE FOR DISCIPLINE

(Dishonest Act)

23. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), for commission of an act of dishonesty in that on or about February 18, 2022, Respondent lied on her renewal application by marking “No” to the conviction question, as set forth in paragraphs 15 through 19, incorporated herein.

FIFTH CAUSE FOR DISCIPLINE

(Making or Signing a Document that Falsely Represents Facts)

24. Respondent is subject to disciplinary action under Code section 4301, subdivision (g), for making or signing a document that falsely represents the existence of nonexistence of a state of facts in that on or about February 18, 2022, Respondent marked “No” to the conviction question on her renewal application which was a false statement, as set forth in paragraphs 15 through 19, incorporated herein.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 129182, issued to Brenna Lynn Teague;
2. Ordering Brenna Lynn Teague to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/19/2023

**Sodergren,
Anne@DCA**

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

SD2022802693