

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

In the Matter of the Accusation Against:

KIRTAN TARUN PATEL, Respondent

Pharmacist License No. RPH 83476

Agency Case No. 7519

OAH No. 2023100950

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 12, 2024.

It is so ORDERED on August 13, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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In the Matter of the Accusation Against:

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Pharmacist License No. RPH 83476

Case No. 7519

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PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 10, 2024.

Diane Von Der Ahe, Deputy Attorney General, Department of Justice, State of California, represented complainant, Anne Sodergren, Executive Officer, Board of Pharmacy (board), Department of Consumer Affairs, State of California.

Tony J. Park, Attorney at Law, California Pharmacy Lawyers, represented respondent, Kirtan Tarun Patel.

Oral and documentary evidence was received, and the matter submitted for decision on April 10, 2024.

FACTUAL FINDINGS

Background

1. On September 28, 2020, the board issued Pharmacist License No. RPH 83476 to respondent Kirtan Tarun Patel. There is no history of discipline imposed against the license.

2. On July 20, 2023, complainant signed the accusation alleging that respondent is subject to discipline under Business and Professions Code sections 490 and 4301, subdivision (l), because he was convicted of crimes that are substantially related to the qualifications, functions, or duties of a pharmacist when, on November 18, 2022, he was convicted of driving under the influence of alcohol (DUI) and DUI with a blood alcohol concentration (BAC) of 0.08 percent or more. Complainant further alleged that respondent is subject to discipline under Business and Professions Code sections 490 and 4301, subdivision (h), because he used alcohol on September 18, 2021,¹ to the extent or in a manner dangerous or injurious to himself or to any other person or the public, or to the extent that such use impaired his ability to conduct with safety to the public the practice authorized by his license. Complainant seeks to revoke respondent's license; to prohibit respondent from serving in a managerial/ownership capacity; and to recover investigation and enforcement costs.

¹ The Accusation's First and Second Causes for Discipline incorrectly state that respondent's DUI incident occurred on September 18, 2022. This is incorrect. The incident occurred on September 18, 2021, and the conviction date was November 18, 2022.

3. Respondent timely filed a notice of defense; this hearing followed.

Respondent's Convictions

4. On November 18, 2022, in the Superior Court of California, County of Orange, Case No. 22WM01208, respondent was convicted on his plea of guilty of violating Vehicle Code sections 23152, subdivision (a), DUI, and 23152, subdivision (b), DUI with a BAC of 0.08 percent or higher, both misdemeanors. Respondent was placed on three years' summary probation under terms and conditions that included completion of a three-month First Offender Alcohol program, a Victim Impact Counseling program, and payment of fines and fees. Respondent's probation is scheduled to end in November 2025.

5. The circumstances that led to respondent's convictions are found in a report that was prepared by the Cypress Police Department (CPD) and admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.² A CPD officer reported that on

² In *Lake*, the California Supreme Court concluded that direct observations memorialized in a peace 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 peace 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.

September 18, 2021, due to a CPD DUI checkpoint, the #2 lane of the street was closed and blocked off with several orange cones and signage that directed traffic into the #1 lane. At about 11:15 p.m., the officer observed a driver, later identified as respondent, stopped in the #2 lane behind a parked police vehicle and an orange cone was under the vehicle, indicating that respondent ran over the cone to enter the #2 lane, ignoring the signage. The officer asked respondent to roll down his window, and as he did so, the officer could smell a strong odor of an alcoholic beverage emitting from the vehicle. The officer asked respondent if he had consumed any alcoholic beverages and he replied, "Yes." While respondent spoke, the officer observed objective signs of intoxication including slurred speech and bloodshot/watery eyes. The officer directed respondent to exit the vehicle, and he walked with respondent to a secondary screening area, where another officer conducted a DUI investigation.

The second officer observed that respondent had slurred speech, bloodshot/watery eyes, an unsteady gait, and a strong odor of an alcoholic beverage emitting from his person/breath. Respondent told the officer that he had consumed three whiskey drinks and that he still felt the effects of the alcoholic beverages. While attempting to administer field sobriety tests (FSTs), the officer observed that after a few seconds, respondent lost his balance, and he was not able to successfully complete the FSTs. Respondent agreed to a preliminary alcohol screening (PAS) test, which reflected BACs of 0.198 percent and 0.200 percent. The officer determined that respondent was driving under influence of alcohol. Respondent was arrested and transported to the police station where a blood test revealed a BAC of 0.21 percent.

Testimony of Huy Do, Pharm.D.

6. Dr. Do is a board inspector who testified at hearing and prepared an investigation report dated December 12, 2022. Dr. Do is familiar with this case, and he

has reviewed the exhibits. The following summarizes his testimony and report. Dr. Do obtained his undergraduate degree from California State University San Bernardino in 2010 and a Doctor of Pharmacy degree from Purdue University in 2014. He worked as a pharmacy technician at Longs Drugs from 2007 through 2014, and as a community pharmacist at CVS from 2014 through 2020. He has been a pharmacy inspector with the board for four years.

7. Dr. Do stated that a pharmacist's duties include to: verify prescriptions; counsel and advise patients, the public, prescribers, nurses, and doctors; verify drug interactions; research drug side effects; and if appropriate, take orders for medications from a prescriber. A pharmacist is responsible for the technicians and clerks working in the pharmacy. A pharmacist must be multitasking all day such as advising and answering questions, supervising technicians and clerks, and completing his/her own work.

Pharmacists work in a variety of settings, including hospitals, retail pharmacies, and compounding pharmacies, but regardless of the setting, a pharmacist exercises his/her clinical judgment multiple times through the course of their work. If a pharmacist is licensed, there is no restriction on the type of facility where he/she may work. A pharmacist may work alone or with several other pharmacists, depending on the size of the facility. A pharmacist is usually not managed or supervised because he or she is the supervisor, and therefore, a pharmacist is the "final point of accountability."

A pharmacist has "corresponding responsibility" with the prescriber, which gives the pharmacist the ability to determine whether a prescribed drug or controlled substance is appropriate or legitimate. If an error is made due to incorrectly verifying a prescription, this could lead to harm or even death to a patient.

8. Dr. Do stated that the use of alcohol is substantially related to the duties of a pharmacist. Alcohol is a central nervous system depressant. Alcohol slows physical and mental processes, making it difficult to exercise good clinical judgment. Alcohol is considered a drug. The decision to drive after using alcohol is using poor judgment, and one who uses poor judgment in his personal life may also use poor judgment in his professional life. This is true even if the dangerous use of alcohol, including choosing to drive, occurred outside the workplace. A pharmacist is licensed to practice, even when not in a work setting. Respondent's decision shows a disregard for public safety. This is concerning to the board because this could impact a patient's health or safety. Dr. Do has not had any formal training regarding alcohol.

RESPONDENT'S AUGUST 8, 2022, LETTER TO THE BOARD

9. On August 8, 2022, respondent notified the board that on his license renewal he had indicated that he had been convicted of a crime. He clarified, in his letter, that at the time of his license renewal, he had an arrest but not a conviction on his record. He was arrested on September 18, 2021, after he was stopped at a DUI checkpoint. His initial arraignment was scheduled for December 2021 but was postponed, and according to his attorney it was still pending at the time of his letter.

Respondent's Evidence

TESTIMONY OF LINDA V. PANOFSKY, PHARM.D.

10. Dr. Panofsky received her undergraduate degree in pre-pharmacy from the University of Central Arkansas and her Doctor of Pharmacy degree from the University of Arkansas for Medical Sciences, College of Pharmacy. Her experience includes: inspector for the board, Adjunct Professor in Pharmacy Law and Ethics at the University of California San Francisco School of Pharmacy, and Assistant Professor of

Pharmacy Practice, University of the Pacific, College of Pharmacy. She is currently employed as a pharmacy consultant for two different consulting firms. The following is a summary of Dr. Panofsky's testimony:

Dr. Panofsky has worked alongside medical doctors in collaborative practices, helping to maintain, monitor, and adjust medication therapy, including psychiatric therapy, often for individuals with substance or chemical dependency. She taught clinical courses in therapeutics, and she taught classes that involved the use of the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, which is the diagnostic authority for mental health disorders.

As a board inspector, Dr. Panofsky conducted inspections or probation reviews of pharmacists who may have had a DUI while on probation or had a prior DUI. Dr. Panofsky does not believe that one DUI equates to dependency or abuse. Alcohol consumption is a very common thing in the public. Substance abuse or dependency is a clinical diagnosis, which can be made using the DSM-5. If a DUI is part of a larger clinical criteria, with subsequent DUIs or DUIs that occurred close to the time of a pharmacist's work shift, then it may in fact be substantially related.

Dr. Panofsky believes that clinical judgment and personal judgment are not mutually exclusive, they are independent of each other. Poor personal judgment does not have to connote a lack of ability to have good professional judgment.

Dr. Panofsky acknowledged that, as a Pharm.D., she has never diagnosed anyone with alcoholism. She understands the board's need to protect the public.

RESPONDENT'S FEBRUARY 23, 2024, LETTER TO THE BOARD

11. On February 23, 2024, respondent wrote a letter to the board where he explained that on the day of the incident he was attending a friend's wedding reception. He did not plan to drink alcohol, so he drove himself, but once at the event he "succumbed to peer pressure," drank alcohol, and drove himself home. He truly regrets his lapse in judgment. After his arrest and conviction, he realized what could have happened as a result of his decision to drink, and he tried to figure out why he "let this reckless error occur." He now holds himself accountable for his decisions. He has maintained his sobriety since the incident. He became a pharmacist primarily because he wanted to help people, and he asked the board to give him a chance to demonstrate his rehabilitation through the practice of pharmacy.

RESPONDENT'S TESTIMONY

12. Respondent drank alcohol due to peer pressure and thereafter made the choice to drive. He thought at the moment that he was "good enough to drive home." He came to a DUI checkpoint. He complied with the officers' request to get out of his vehicle and do FSTs. He agreed to the PAS and the blood test at the police station. This was the only time he has been "confronted" by law enforcement.

Respondent's employer is aware of his DUI conviction. If he could change one thing, he would not have had anything to drink that night. He believes he is able to function fully as a pharmacist. He has never had negative comments about his work, and in fact, he has been given more responsibility.

RESPONDENT'S OTHER EVIDENCE

13. Respondent has satisfied all requirements of his criminal probation. He provided documentation which included: weekly Alcoholics Anonymous (AA) attendance; completion of the Victim Impact Counseling course; temporary surrender of his driver's license; and payment of all court costs.

14. Respondent volunteers with the Red Cross. He made a full year commitment and plans to continue to volunteer after the one year is over.

15. While attending the weekly AA meetings ordered by the court, he often attended additional meetings. He continues to attend AA today because he found it was good for self-reflection.

16. Although not required by the court, respondent underwent drug and alcohol screenings over a two-month period from December 2023 through January 2024 because he wanted to "have something tangible" to see the results of maintaining his sobriety. He stopped the screenings due to the cost of \$65 per test.

CHARACTER REFERENCE LETTERS

17. Respondent submitted the following character reference letters. Each author acknowledged reading the accusation against respondent and each letter was signed under penalty of perjury.

18. Pavin S. Kang is an attorney who met respondent 12 years ago when they were roommates at UCLA. Mr. Kang wrote that respondent was often the first to sign up for volunteer activities and health care public interest projects. He described respondent as trustworthy, reliable and a service oriented individual.

19. Sam Badianat, Pharm.D., is a colleague and pharmacist who has worked with respondent since 2022. Dr. Badianat wrote that respondent has “exemplified his clinical knowledge” by asking and answering relevant questions, such as drug-drug interactions, therapeutic duplications, and improper indications, and “always in a competent manner.” Respondent has expressed remorse for his actions. This incident does not define respondent, who Dr. Badianat described as a dedicated and professional colleague.

20. Thang Chu, Pharm.D., supervised respondent from 2018 through 2023. Dr. Chu described respondent as “hardworking, reliable, professional, and knowledgeable.” He holds respondent “in very high regard.” Dr. Chu wrote: “I have given him tasks that I would only trust myself or my senior pharmacist to perform.”

21. Trang Teri Hoang, RPH, wrote that respondent has been an integral part of Rose Pharmacy for the past five years. He started as an intern and worked throughout school, and in 2020, she hired him as a pharmacist over a pool of qualified candidates, due to “his strong work ethic and loyalty to our pharmacy.” She wrote that “he takes the time to listen and care for our patients.” Respondent is respected by his peers and associates.

22. Uyen Lam Truong, RPH, has worked with respondent since 2019 when they were pharmacy interns at Rose Pharmacy. The author wrote that even as an intern, respondent’s knowledge of pharmacology surpassed many pharmacists. Respondent provides excellent patient care. When respondent received his license, “it was only natural that he would be one of the strongest pharmacists at Rose Pharmacy.”

Costs of Enforcement

23. The Attorney General's Office sought recovery of enforcement costs totaling \$5,673.75. The Deputy Attorney General who prosecuted the case provided a declaration, with an attached document entitled "Matter Time Activity by Professional Type" that identified the tasks performed, the time spent on each task, the persons who performed each task, and the hourly rates charged for the costs incurred through April 9, 2024. The request for prosecution costs complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), to prove the prosecution costs sought. The enforcement costs of \$5,673.75 are reasonable.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.) The burden of proof is on complainant.

Purpose of License Discipline

2. The business of compounding prescriptions and selling drugs is intimately connected with and has a vital relationship to the health, safety, and welfare of the public. Public safety must be regarded as superior to private rights. (*Brodsky v.*

California State Board of Pharmacy (1959) 173 Cal.App.2d 680, 688-689.) Protection of the public is the board's highest priority in exercising its disciplinary functions; whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount. (Bus. & Prof. Code, § 4001.1.) The main purpose of license discipline is protection of the public through the prevention of future harm and the improvement and rehabilitation of the licensee. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Sup. Ct.* (2002) 96 Cal.App.4th 757, 772.)

Relevant Authority

3. Business and Professions Code section 4301 authorizes the board to take action against any holder of a license for unprofessional conduct. Unprofessional conduct includes:

(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 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 statute.

[¶] . . . [¶]

(I) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .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.

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

5. Business and Professions Code section 493 states in pertinent part:

(a) Notwithstanding any other 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.

Regulatory Authority

6. 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.

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

(a) For the purpose of denial, suspension, or revocation of a . . . license . . . a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation . . . 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.

Substantial Relationship

8. Pharmacists must scrupulously exercise good judgment, particularly with regard to dangerous substances and alcohol. The Legislature specifically provided in Business and Professions Code section 4301, subdivision (h), that the use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself or others, is grounds for license discipline. California Code of Regulations, title 16, section 1770 citing references, provides that any crime or act shall be considered substantially related to the qualifications of a licensee if to a substantial degree it evidences present or potential unfitness.

Under the express language of Business and Professions Code section 4301, subdivisions (h) and (l), and the clear intent of California Code of Regulations, title 16, section 1770 citing references, respondent's misdemeanor DUI conviction constituted unprofessional conduct that is substantially related to the qualifications, functions, and duties of a pharmacist.

9. The California Supreme Court discussed the relationship between alcohol abuse and a health care provider's ability to safely practice in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757. In that case, the court determined that driving while

under the influence of alcohol demonstrates an inability or unwillingness to obey the legal prohibition against drinking and driving, and it "constitutes a serious breach of a duty owed to society." (*Id.* at pp. 770-771.) The *Griffiths* court explained the serious impact of alcohol abuse on a licensee's fitness to provide medical care and concluded convictions involving alcohol consumption were logically related to fitness to practice medicine, stating: "Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence." Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. Additionally, in response to the argument in *Griffiths* that there was no evidence that showed that alcohol use impaired the licensee's medical practice, the court stated: ". . . we reject the argument that a physician can seal off or compartmentalize personal conduct so it does not affect the physician's professional practice." (*Id.* at p. 771.)

Causes for Discipline

10. Cause exists to discipline respondent's pharmacist license, pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), on the grounds that, on November 18, 2022, respondent was convicted of DUI and of having a BAC of 0.180 percent or higher, both of which are crimes that are substantially related to the qualifications, functions, or duties of a pharmacist.

11. Cause exists to discipline respondent's pharmacist license, pursuant to Business and Professions Code sections 4301, subdivision (h), on the grounds that, on September 18, 2021, respondent used alcohol to the extent or in a manner dangerous or injurious to himself or to any other person or the public, or to the extent that such

use impaired his ability to conduct with safety to the public the practice authorized by his license.

Disciplinary Guidelines

12. In reaching a decision in a disciplinary action under the Administrative Procedure Act, the board must consider its "Disciplinary Guidelines" (Rev. 2/2017).

The factors relevant to this matter that were considered in reaching a decision in this matter are: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record (including citations); number and/or variety of current violations; nature and severity of the acts under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the acts; whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, respondent had knowledge of or knowingly participated in such conduct; and financial benefit to respondent from the misconduct.

These factors have been considered in this matter.

The Guidelines identify four categories of violations and provide recommended minimum and maximum discipline. For each violation category, the board has given offense descriptions and examples where violations would typically merit the recommended range of minimum to maximum penalties for that category. These descriptions and examples are representative, and they are not intended to be comprehensive or exclusive. Violations involving the use of alcohol are listed as a Category III violations. The minimum recommended discipline is a stayed revocation with three to five years' probation with a 90-day actual suspension. The maximum discipline is revocation.

Rehabilitation

13. Rehabilitation is a “state of mind” and the law looks with favor upon rewarding with the opportunity to serve one who has achieved “reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Acknowledgement of the wrongfulness of one’s actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) While a candid admission of misconduct and full acknowledgment of wrongdoing is a necessary step in the rehabilitation process, it is only a first step; a truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he or she is rehabilitated. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.) Administrative proceedings to impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Evaluation of Appropriate Level of Discipline

14. Regardless of respondent’s reasons, specifically, the peer pressure, not being able to get a ride home with friends, and believing he was “good enough” to drive on September 18, 2021, respondent chose to drink and chose to drive thereafter. Although this was his first offense, no one was injured, and he was not under the influence of alcohol while at work, respondent’s conduct cannot be diminished. What must be determined is the appropriate level of discipline.

Respondent provided significant evidence of rehabilitation. He admitted to being intoxicated on the date of his arrest, which led to his DUI conviction for which he was placed on three years’ informal probation. He has completed all the conditions of his probation, including a three-month First Offender Alcohol program, Victim

Impact Counseling program, attending AA meetings, and payment of fines and fees. His probation is scheduled to terminate in November 2025.

Respondent was remorseful for his conduct and lapse of judgment. He presented as being very aware of his failure and trying to determine why he made this irresponsible decision. Respondent does not consider himself to be an alcoholic, but he made the determination to never drink and drive again. He has been completely sober since his arrest on September 18, 2021, which is two and a half years ago.

Respondent has become fully invested in AA. While completing the court-required weekly attendance, he attended more meetings when he was able. He has continued to participate in AA because he found it was helpful for self-reflection. He also voluntarily submitted to two months of drug/alcohol screenings that were all negative.

Respondent's employer is aware of his DUI conviction. Respondent has been successful in maintaining his employment since his arrest and has been given increased responsibility. Respondent volunteers with the Red Cross and plans to continue to do so.

Based on all the above, the appropriate discipline in this case is a public reproof and payment of costs. This discipline against respondent's license represents a departure from the disciplinary guidelines, which provide a minimum recommendation of revocation stayed with probation. However, this departure is warranted based on the evidence of rehabilitation submitted by respondent.

Cost Recovery

15. Business and Professions Code section 125.3 permits the board to recover costs of investigation and enforcement. Enforcement costs of \$5,673.75 are reasonable.

16. 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.

17. Applying the *Zuckerman* factors to this case, respondent is ordered to pay cost recovery in the amount of \$5,673.75.

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ORDER

Pharmacist License Number RPH 83476 issued to respondent Kirtan Tarun Patel is hereby publicly reprovved. This decision shall serve as the reprovval. Respondent is ordered to pay the board costs associated with enforcement in the amount of \$5,673.75. Respondent shall be permitted to pay these costs pursuant to a payment plan approved by the board.

DATE: May 10, 2024


Marion Berg (May 10, 2024 16:57 PDT)

For

MARION J. VOMHOF

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. 7519

14 **KIRTAN TARUN PATEL**
15 **3103 W. Polk Ave.**
Anaheim, CA 92801

ACCUSATION

16 **Pharmacist License No. RPH 83476**

17 Respondent.

18
19 **PARTIES**

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

22 2. On or about September 28, 2020, the Board issued Pharmacist License Number RPH
23 83476 to Kirtan Tarun Patel (Respondent). The Pharmacist License was in full force and effect at
24 all times relevant to the charges brought herein and will expire on August 31, 2024, unless
25 renewed.

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JURISDICTION

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

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

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

6. Code section 4300.1 states:

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

7. Code section 4307, subdivision (a) states:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

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STATUTORY PROVISIONS

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

9. Section 493 of the Code states in pertinent part:

(a) Notwithstanding any other 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.

10. Code section 4301 states in pertinent part:

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

...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or 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 statute.

...

(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

1 evidence only of the fact that the conviction occurred. The board may inquire into the
2 circumstances surrounding the commission of the crime, in order to fix the degree of
3 discipline or, in the case of a conviction not involving controlled substances or
4 dangerous drugs, to determine if the conviction is of an offense substantially related to
5 the qualifications, functions, and duties of a licensee under this chapter. A plea or
6 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.

7 **REGULATORY PROVISIONS**

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

9 When considering the suspension or revocation of a facility or a personal
10 license on the ground that the licensee has been convicted of a crime, the board will
11 consider whether the licensee made a showing of rehabilitation and is presently fit for
12 a license, if the licensee completed the criminal sentence at issue without a violation
13 of parole or probation. In making this determination, the board will consider the
14 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:

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

16 (2) Total criminal record.

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

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

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

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

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

23 (a) For the purpose of denial, suspension, or revocation of a personal or facility
24 license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the
25 Business and Professions Code, a crime, professional misconduct, or act shall be
26 considered substantially related to the qualifications, functions or duties of the
27 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.

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

- 1 (1) The nature and gravity of the offense;
- 2 (2) The number of years elapsed since the date of the offense; and
- 3 (3) The nature and duties of the practice, profession, or occupation that
may be performed under the license type sought or held.

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

6 ...

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

8 **COST RECOVERY**

9 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case. A board is not precluded from including the costs of investigation and
13 enforcement in any stipulated settlement.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(November 18, 2022 Criminal Conviction for DUI on September 18, 2022)**

16 14. Respondent has subjected his pharmacist license to disciplinary action under Code
17 sections 490 and 4301, subdivision (1), in that he was convicted of crimes that are substantially
18 related to the qualifications, functions, or duties of a pharmacist. On or about November 18,
19 2022, in a criminal proceeding entitled *People of the State of California v. Kirtan Tarun Patel*, in
20 the Superior Court of California, County of Orange, Case No. 22WM01208, Respondent was
21 convicted on his plea of guilty of violating Vehicle Code sections 23152, subdivision (a) (driving
22 under the influence of alcohol), and 23152, subdivision (b) (driving under the influence of alcohol
23 with a blood alcohol concentration of 0.08 percent or more, by weight (BAC 0.21 percent). The
24 Court placed Respondent on three (3) years informal probation with terms and conditions that
25 included obey all laws, not drive a motor vehicle with a measurable amount of alcohol, submit to
26 a chemical test on demand of any peace officer, attend and complete a 3-month Level 1 First
27 Offender Alcohol Program, and attend and complete Victim Impact Counseling.

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1 15. The circumstances that led to the conviction are that on September 18, 2021, at
2 approximately 11:15 p.m., Respondent drove through a Cypress Police Department DUI and
3 driver's license checkpoint on Lincoln Avenue in the city of Cypress, California. An officer
4 requested Respondent exit his vehicle and walk to a secondary screening area of the checkpoint
5 because Respondent was displaying some objective signs/symptoms of alcohol intoxication. The
6 officers observed that Respondent's gait was unsteady as he walked to the secondary screening
7 area. Respondent first told the officers that he was unsure how many alcoholic beverages he had
8 consumed earlier, then later stated he had consumed approximately three whiskey drinks, and that
9 he still felt the effects of the alcoholic beverages he had consumed earlier. The officers observed
10 that Respondent had slurred speech, bloodshot/watery eyes, and an unsteady gait, and had a
11 strong odor of an alcoholic beverage emitting from his person and breath. Respondent submitted
12 to a series of field sobriety tests, which he failed. Respondent submitted to a preliminary alcohol-
13 screening tests at approximately 11:42 p.m. and 11:45 p.m., which resulted in a reading of 0.198
14 percent and 0.200 percent blood alcohol concentration, respectively. Respondent was placed
15 under arrest and advised he was required to submit to a blood test, and was transported to La
16 Palma Police Department for booking. At approximately 0016 hours on September 19, 2021,
17 Respondent submitted to a blood draw, which was booked into evidence and submitted to the
18 Orange County Crime Laboratory to be processed. The blood analysis by the Orange County
19 Crime Laboratory revealed a blood alcohol concentration of 0.21 percent, by weight.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Dangerous Use of Alcohol on September 18, 2021)**

22 16. Respondent has subjected his pharmacist license to disciplinary action under Code
23 section 4301, subdivision (h), because he used alcohol on September 18, 2022, to the extent or in
24 a manner dangerous or injurious to himself or to any other person or the public, or to the extent
25 that such use impaired his ability to conduct with safety to the public the practice authorized by
26 his license, as set forth at paragraphs 14 and 15, which are incorporated here by reference.

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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 Pharmacist license Number 83476 issued to Kirtan Tarun Patel;
- 2. Ordering Kirtan Tarun Patel 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;
- 3. Prohibiting Kirtan Tarun Patel from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee for a period not to exceed five years where an existing license is placed on probation; or, if the license is revoked, until it is reinstated; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 7/20/2023

Sodergren,
 Anne@DCA
 ANNE SODERGREN
 Executive Officer
 Board of Pharmacy
 Department of Consumer Affairs
 State of California
Complainant



Digitally signed by Sodergren,
 Anne@DCA
 Date: 2023.07.20 21:40:08 -07'00'

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