

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

In the Matter of the Accusation Against:

AUSTIN ALEXANDER BURNS-GAMMAGE,

aka AUSTIN A. BURNS,

Respondent.

Pharmacy Technician Registration No. TCH 177652

Agency Case No. 7686

OAH No. 2024060098

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, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made:

- In Probation Condition No. 5, entitled *“Reporting of Employment and Notice to Employers,”* on Pages 29 – 31, references to “case number 7186” and “case number 6849” should read as “case number 7686”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective at 5:00 p.m. on December 20, 2024.

It is so ORDERED on November 21, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.
Board President

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PROPOSED DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on August 26, 2024.

Theodore S. Dracar, Deputy Attorney General, appeared and represented complainant, Anne Sodergren, Executive Officer of the California Board of Pharmacy (board), Department of Consumer Affairs, State of California.

Austin Alexander Burns-Gammage, aka Austin A. Burns, respondent, appeared and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 26, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 15, 2020, the board issued to respondent Pharmacy Technician Registration Number TCH 177652, which is set to expire on May 31, 2026, unless renewed.

2. On February 19, 2024, 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, his dangerous use of alcohol, and his unprofessional conduct as set forth in the following Factual Findings. Complainant also seeks costs of investigation and enforcement of this matter.

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

Respondent's Conviction

4. On June 2, 2023, in the Superior Court of California, County of Riverside, Case No. SWF2300040, respondent was convicted by his plea of guilty of violating Vehicle Code section 23153, subdivision (a), driving under the influence (DUI) and causing injury to another, a felony; Vehicle Code section 23153, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or higher and causing injury

to another, a felony; and both with the special allegation/enhancement under Penal Code section 12022.7, subdivision (a), for causing great bodily injury to another person. Respondent was sentenced to 90 days in custody, with credit of two days served in jail, and placed on three years' formal probation under the following terms and conditions: completion of 688 hours of community service by December 2, 2024, and upon completion of 344 hours of community service, the balance of hours will be deemed satisfied; payment of fines of \$2,073; placement of an ignition interlock device (IID) by December 4, 2023, on his vehicle for 12 months; completion of a three-month first offender DUI program; and if there are no violations after 18 months, respondent's probation is scheduled to terminate on December 2, 2024.

5. The circumstances of respondent's conviction are found in a report that was prepared by the California Highway Patrol (CHP), and admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.¹ On December 17, 2022, at 2:25 a.m., first responders arrived at the scene of a single-vehicle collision on State Route 79 in Temecula,

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

California. CAL FIRE firefighters discovered respondent's damaged vehicle in a grassy field off the road. Respondent was standing outside his vehicle and an unconscious male passenger, KS, was trapped in the right-front passenger seat. A CAL FIRE captain observed respondent in an intoxicated state as an odor of alcohol was on his person and he repeatedly fell asleep when paramedics treated him. Respondent and KS were transported to a hospital. At 2:58 a.m., CHP officers arrived at the scene when the ambulances were leaving the scene. CHP officers investigated the scene and assessed that respondent had lost control of his vehicle while driving along a turn at a high rate of speed, his vehicle skidded off the road into the field, and rolled several times. At the hospital, respondent admitted to CHP Officer Nicholas that he consumed alcohol before driving and there were no mechanical problems with his vehicle. Respondent was observed to have a faint odor of alcohol, and red and watery eyes. Respondent had an injury to the bridge of his nose, a severe large open laceration on the back of his hand, and other lacerations. KS suffered unconsciousness after the collision and injuries to his hands, arms, chest, and shoulder. Respondent submitted to breathalyzer tests at 4:30 a.m. that showed his BAC levels were 0.074 percent and 0.081 percent. About 15 minutes later, he submitted to a chemical breath test that showed his BAC level was 0.08 percent. He was arrested for DUI.

Respondent's Testimony and Letters of Support

6. The following is a summary of the testimony of respondent, which is fully consistent with a statement that he wrote in preparation for this hearing.

7. Respondent admitted to the DUI incident on December 17, 2022, which resulted in the serious crash, his passenger being injured, and his conviction. He was treated at the hospital until about 7:00 a.m. then taken to jail. He addressed the impact of his action on his family, his friend, KS, who was his passenger, and KS's family. He

stated, "It's really hard to know that you've caused harm to somebody, especially someone that you're close with and you caused harm to their family and their friends. I think about this every day." He likes to think that he has become a better person from everything that happened because he is more aware of situations that he puts himself in and he understands what he does affects the people around him. He and KS have been friends since elementary school. Shortly after the incident, he visited KS at his home and apologized to KS and KS's family. He also offered to pay any financial bills of KS related to the incident, but KS's family declined. Respondent and KS are still friends and see each other about once a week.

8. Respondent testified about his probation. He started a three-month first offender DUI program in September 2023 and completed it in November 2023. He paid the fees related to the DUI program. He paid the court fines of \$2,073. He had an IID installed in his vehicle in August 2023, and recently completed the 12-month installation requirement although he still making payments to the IID company. He recently received a bill from the CHP in the amount of \$2,500. He is focused on paying back his family members, including his grandmother, who lent him money to pay the costs of the DUI program, court fines, bail, and the recent CHP bill. He remarked that his probation was originally in Riverside County, and it took a while to get transferred to San Diego County. He has an assigned probation officer and his probation is going "pretty good." He has been fully compliant and has not been charged with any violations of his probation.

9. Respondent has been focused on completing his community service requirement, which he is doing at New Song Church. He works with the facilities department five to six days each week, for five to six hours or more each day. His duties include cleaning, mopping, vacuuming, moving furniture, and repairing items.

He has a set schedule. On Mondays he cleans the front lobby, executive pastor's office and another office, a coffee area, removes trash and recycling, and cleans six preschool rooms. On Tuesdays, he cleans the three sets of restrooms for men and women where he cleans the mirrors, counters, toilets, urinals, and replaces soap, removes trash, and mops; and he vacuums the office spaces and event room. On Wednesdays, he vacuums the large sanctuary, large event rooms, office spaces, and again cleans the three sets of restrooms for the men and women. On Thursdays, he cleans two youth rooms by removing trash, mopping floors, cleaning windows, and he cleans the lobby area for the youth rooms, a daycare room, and mops the main hallway of the church. On Fridays, he repeats the tasks for Mondays and Tuesdays. On Saturdays, he does whatever the church needs him to do, which might include painting a fence and helping with the children.

10. A letter from Cyrus Greene, director of facilities at New Song Church, dated August 17, 2024, states, errors in original:

We have had Austin Burnsgammage working on his 688 hours of community service here at New Song Church which Austin has completed 232 hr. With every task that he was assigned to him which was a weekly schedule. Our church building used to be a Dixie Line Lumber Company so there is much space in need of cleaning 66,000 SQ FT. We have enjoyed having August here and helping with whatever he is asked to do, never complaining. Austin's attitude has made him a pleasure to work with and he is a hard worker. He has a good work ethic, eager, polite and a pleasure to work with. He is an outstanding worker. He has

been such a good worker that I asked him to train a new Custodian and he did a great job in doing so. We have so appreciated his help at the church.

11. Aside from his community service duties at the church, respondent attends church events and speaks with others at the church about what happened to him. Respondent stated, "There are people in my community who want to see me . . . do better things with my time and my life . . . this is a significant impact in my life."

12. Respondent testified about his employment at the CVS pharmacy inside a Target store in Oceanside. He started working there in 2021. He continued to work at the pharmacy even after his DUI and conviction. He decided to leave his employment in May 2024 because this hearing was coming up, he did not know what was going to happen with his registration, and he did not want to have to suddenly leave the pharmacy. He stated, "I didn't feel it would be right for me to continue to work at the pharmacy without having a proper understanding about what would happen." He really liked and appreciated working at the pharmacy where he had a positive impact on people's lives. He will soon be done with his community hours at the church, but he may stay on working there as a paid employee if he can no longer be employed as a registered pharmacy technician. He wants to keep his registration because it is "the best work" he can find and he is "skilled at it and can contribute" to society. He used to work 50 to 60 hours each week at the CVS pharmacy when it was busy. He would like to still work at the pharmacy, but do fewer hours because he is back in school.

13. Respondent graduated from El Camino Real High School in 2019. He was 21 years old at the time of the incident. He is now 23 years old. He previously attended Mira Costa College where he took courses for his pharmacy technician registration. After he stopped working at the pharmacy in May 2024, he re-enrolled at Mira Costa

College and is working on an associate degree in biology. He plans to transfer to a four-year university and major in biology. His long-term goals include earning a master's degree and pursuing a career in health care. He stated, "I have an ethical obligation to operate to the best of my abilities."

14. When respondent was asked if he understood the board's concerns with allowing him to be registered, he replied, "The board doesn't want people with an alcohol problem working in a pharmacy. I understand this. . . . Risking the health of others . . . [it's] a job that requires a high level of awareness and ability to deliver care."

15. Respondent submitted a letter from James Christian Kringel, M.D., his primary care physician (PCP) at Kaiser Permanente (Kaiser), dated August 16, 2024, which states, "I evaluated Mr. Burns-Gammage today. He reports no alcohol use in the past 2 years. He reports no other drug use either."

16. Respondent testified that his date of sobriety is December 17, 2022, which is the date of the incident. He has not used alcohol or any other substances since that date. He was asked if he considers himself an alcoholic and he replied:

Yes, I guess I would. It's a good idea to think of it that way, so you always maintain an awareness of the seriousness and dangers of continuing to drink again. I had an incident where alcohol lead to bad decision-making that negatively impacted my life and others.

17. Respondent informed his PCP about the incident and his DUI, and his PCP referred him to the psychiatry department at Kaiser. He was not recommended for any mental health treatment or addiction treatment based on an initial intake and evaluation. He asked to speak with a psychiatrist at Kaiser but he was told again that

Kaiser did not recommend any such treatment. He is active in speaking with people at his church for guidance in life and in general.

18. Respondent was asked if he was aware of and able to comply with various terms and conditions of probation. He did not know about the board's probation terms and conditions. He was asked about drug testing and indicated that he was willing to participate, but he was concerned about costs as his finances are strained because he is currently committed to completing his community service for his conviction and repaying debts to his family members. His 688 hours of community services can be deemed complete at 344 hours, and he believes that he will be done in about mid-October 2024. Afterward, he will be able to either work for pay at the church or he hopes to be able to gain employment at a pharmacy or elsewhere despite his felony DUI conviction. He is very willing to attend Alcoholics Anonymous (AA) or similar group meetings, as there is an AA group that meets at the church and he believes that he would be able to attend their meetings.

Costs

19. Complainant sought recovery of investigation costs of \$90.29, and enforcement costs of \$5,112.50, for a total of \$5,202.79.

20. Complainant signed a declaration that listed the actual investigative costs the agency incurred on this matter, which were listed as \$90.29. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$90.29 costs requested were reasonable.

21. The Deputy Attorney General who prosecuted the case executed a declaration requesting enforcement costs of \$5,112.50 through August 7, 2024. Attached to his declaration was a document entitled "Matter Time Activity by

Professional Type,” that identified the tasks performed, the time spent on each task, and the hourly rate of the persons performing the tasks for the costs up through August 7, 2024. The deputy’s declaration and the attachment seeking enforcement costs of \$5,112.50 complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), and those prosecution costs were reasonable.

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.

(B) 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 states, in pertinent part:

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

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

(1) Suspending judgement.

(2) Placing him or her on probation.

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

(3) Revoking his or her license.

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

[¶] . . . [¶]

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions. . . .

11. Business and Professions Code section 4300.1 provides that the expiration, cancellation, forfeiture, or suspension of a board-issued license, the placement of a license in a retired status, or the voluntary surrender of a license will not deprive the board of taking disciplinary action against the licensee.

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

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

[¶] . . . [¶]

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

[¶] . . . [¶]

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United

States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

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

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

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

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

[¶] . . . [¶]

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

Cause Exists to Impose Discipline on Respondent's Registration

14. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code section 4301, subdivisions (k) and (l). Complainant established, by a preponderance of the evidence, that on December 17, 2022, respondent was convicted of a felony that involved the use of an alcoholic beverage and is substantially related to the qualifications, functions, and duties of a pharmacy technician. (First 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 December 17, 2022, respondent used an alcoholic beverage to an extent or in a manner that was dangerous and injurious to himself, and to others, when he operated a motor vehicle while significantly impaired by alcohol. (Second Cause for Discipline.)

16. Cause exists to discipline respondent's registration as a pharmacy technician under Business and Professions Code section 4301. Complainant established, by a preponderance of the evidence, that on December 17, 2022, respondent engaged in unprofessional conduct by being convicted of a felony involving the consumption of an alcoholic beverage and using an alcoholic beverage to an extent or manner that was dangerous to himself and others when operating a vehicle while impaired by alcohol. (Third Cause for Discipline.)

Applicable Law and Guidelines Regarding Rehabilitation

17. 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.)

18. 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.)

19. 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.

20. 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.

21. 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

22. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy technicians have access to confidential personal and financial

information of consumers and to highly regulated medications and devices. The board's Guidelines state that the board files cases against pharmacy technicians where the violations involve significant misconduct on the part of the licensee, and that the board believes that revocation is typically the appropriate penalty when the grounds for discipline involve significant misconduct.

23. In this case, respondent acknowledged the wrongfulness and severity of his DUI conviction and the incident leading to his arrest. He was forthright when he testified and admitted to driving his vehicle after consuming alcohol. He was quite remorseful about the injuries his passenger KS, his friend since elementary school, sustained and the harm he caused to KS, KS's family, and respondent's own family. He was contrite about turning things around in his life and understanding how this incident and conviction can only better him. He testified about and submitted a strong support letter from the church where he is completing his court-ordered 688 community service hours. He has performed 232 hours thus far, and after 344 hours, the court will deem his community service hours to be completed. He spoke in detail and with a sense of achievement about his facilities and janitorial duties at the church that includes cleaning toilets and urinals, mopping floors, vacuuming, painting a fence, and doing about anything he is asked to do for six hours or more each day, for six days each week. It is not lost upon him that his life has changed dramatically since his arrest and DUI conviction. He expressed pride about his work at the CVS pharmacy from 2021 through May 2024, and he was keen that his work at the pharmacy was important to the community. The pharmacy allowed him to continue working after his DUI although he decided to leave this year because he was not sure what was going to happen to his registration and he did not want to suddenly leave the pharmacy. He has since re-enrolled in college to earn his associate degree in biology and transfer to a four-year college. He expressed his hope to retain his registration and return to

working at the pharmacy. He was quite willing to abide by any terms and conditions of probation ordered by the board, although he was honest about his limited finances related to his need to complete his community service hours and his uncertainty about being employed by a pharmacy with his conviction. However, he appeared motivated to make it work and continue his successful path of changing his life around. Moreover, respondent clearly stated his date of sobriety is December 17, 2022, which is the date of the incident. He was forthright and sincere when stating he has not consumed any alcohol or other substances since that date, and his PCP wrote a letter confirming his sobriety.

24. Based on the above, the appropriate discipline in this case is revocation of respondent's pharmacy technician registration, immediate stay of the revocation, and a period of two-years' probation with terms and conditions including payment of reduced costs in the amount of \$1,000, attendance at AA meetings at least once a week, employment at a pharmacy for a minimum of 40 hours each month, and drug and alcohol testing for a period of one year.

Recovery of Costs

25. 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)

26. 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.

27. Considering the *Zuckerman* factors, costs are reduced to \$1,000 because respondent presented a good faith belief in the merits of his position and he has a very limited financial ability to pay.

ORDER

Pharmacy Technician Registration Number TCH 177652 issued to respondent Austin Alexander Burns-Gammage is revoked; however, the revocation is stayed and respondent is placed on probation for two (2) years upon the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; and

- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. REPORT TO THE BOARD

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

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

3. INTERVIEW WITH THE BOARD

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more

scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. COOPERATE WITH BOARD STAFF

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

5. REPORTING OF EMPLOYMENT AND NOTICE TO EMPLOYERS

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7186 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

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

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

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7186, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 7186, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6849, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through

an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 7186, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a Pharmacy Technician, or any position for which a Pharmacy Technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. NOTIFICATION OF CHANGE(S) IN NAME, ADDRESS(ES), OR PHONE NUMBER(S)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

7. REIMBURSEMENT OF BOARD COSTS

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$1,000. Respondent shall make said payments as follows:

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

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

8. PROBATION MONITORING COSTS

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. STATUS OF LICENSE

Respondent shall, at all times while on probation, maintain an active, current Pharmacy Technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current Pharmacy Technician license shall be considered a violation of probation.

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

10. LICENSE SURRENDER WHILE ON PROBATION/SUSPENSION

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

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

11. CERTIFICATION PRIOR TO RESUMING WORK

Respondent shall be suspended, and shall not work as a pharmacy technician, until he has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that he may begin work. Failure to achieve

certification within six (6) months of the effective date shall be considered a violation of probation.

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

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

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

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

12. PRACTICE REQUIREMENT – EXTENSION OF PROBATION

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a Pharmacy Technician in California for a minimum of forty (40) hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of

probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a Pharmacy Technician in California for the minimum number of hours in any calendar month for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a Pharmacy Technician in California for the minimum number of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

13. DRUG AND ALCOHOL TESTING FOR ONE (1) YEAR

Respondent, at his own expense, shall participate in testing for one (1) year as directed by the board or its designee for the detection of alcohol, controlled substances, and dangerous drugs and/or dangerous devices. Testing protocols may include biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its designee. All testing must be pursuant to an observed testing protocol, unless respondent is informed otherwise in writing by

the board or its designee. Respondent is required to participate in testing for one (1) year and frequency of testing will be determined by the board or its designee.

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

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

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, respondent shall seek and receive approval from the board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, respondent shall enroll and register with the approved alternate drug testing vendor, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by respondent. During the period of absence of the area, respondent shall commence testing protocols with the alternate vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the board or its designee, or to timely enroll and register with, timely commence

testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its designee may require respondent to timely provide documentation from a licensed practitioner authorized to prescribe the detected substance demonstrating that the substance was administered or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such documentation shall be provided by respondent within ten (10) days of being requested.

Any of the following shall be considered a violation of probation and shall result in respondent being immediately suspended from practice as a pharmacy technician until notified by the board in writing that he may resume practice: failure to timely complete all of the steps required for enrollment/registration with the drug testing vendor, including making arrangements for payment; failure to timely commence drug testing protocols; failure to contact the drug testing vendor as required to determine testing date(s); failure to test as required; failure to timely supply documentation demonstrating that a detected substance was taken pursuant to a legitimate prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee shall inform respondent of the suspension and inform him to immediately

leave work, and shall notify respondent's employer(s) and work site monitor(s) of the suspension.

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

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

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

14. ABSTAIN FROM DRUGS AND ALCOHOL

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a

legitimate prescription issued as a necessary part of treatment. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

15. ATTEND SUBSTANCE ABUSE RECOVERY RELAPSE PREVENTION AND SUPPORT GROUPS

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

16. VIOLATION OF PROBATION

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate

probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

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

17. COMPLETION OF PROBATION

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

DATE: September 17, 2024



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings

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

13 In the Matter of the Accusation Against:

Case No. 7686

14 **AUSTIN ALEXANDER BURNS-**
15 **GAMMAGE,**
16 **AKA AUSTIN A. BURNS**
4316 Cassanna Way, #310
Oceanside, CA 92057

ACCUSATION

17 **Pharmacy Technician Registration No.**
18 **TCH 177652**

Respondent.

21 **PARTIES**

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

24 2. On September 15, 2020, the Board issued Pharmacy Technician Registration Number
25 TCH 177652 to Austin Alexander Burns-Gammage, aka Austin A. Burns (Respondent). The
26 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
27 brought herein and will expire on May 31, 2024, unless renewed.

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1 (4) Revoking his or her license.

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

4 . . .

5 (d) The board may initiate disciplinary proceedings to revoke or suspend any
6 probationary certificate of licensure for any violation of the terms and conditions of
probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

7

8 7. Code section 4300.1 states:

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

13 8. Code section 4301 states:

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

16

17 (h) The administering to oneself, of any controlled substance, or the use of any
18 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
19 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.

20

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

23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of a
25 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
26 States Code regulating controlled substances or of a violation of the statutes of this
27 state regulating controlled substances or dangerous drugs shall be conclusive
28 evidence of unprofessional conduct. In all other cases, the record of conviction shall
be conclusive evidence only of the fact that the conviction occurred. The board may
inquire into the circumstances surrounding the commission of the crime, in order to
fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
substantially related to the qualifications, functions, and duties of a licensee under this

chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw their plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

REGULATORY PROVISIONS

9. 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.

10. 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 (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
4 may be performed under the license type sought or held.
- 5 (c) For purposes of subdivision (a), substantially related crimes, professional
6 misconduct, or acts shall include, but are not limited to, those which:
- 7 . . .
- 8 (5) Involve a conviction for driving under the influence of drugs or
9 alcohol.

10 **COST RECOVERY**

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

17 **FACTUAL ALLEGATIONS**

18 12. At about 2:25 a.m. on December 17, 2022, first responders arrived at a single-vehicle
19 collision at the intersection of State Route 79 near Anza Road in Temecula. Upon their arrival,
20 CalFire firefighters found Respondent's highly damaged vehicle in a grassy field off the highway,
21 with Respondent standing outside, and they found KS, an unconscious male, trapped in the right-
22 front passenger seat. Respondent admitted being the driver, and the CalFire Captain on scene
23 observed that Respondent appeared intoxicated because he reeked of alcohol and repeatedly fell
24 asleep while paramedics attended to him. Respondent and passenger KS were transported by
25 ambulance to a hospital for medical treatment. At about 2:58 a.m., California Highway Patrol
26 (CHP) officers arrived at the scene as the ambulances were departing. The CHP later investigated
27 the accident and determined that Respondent had lost control of the vehicle while driving through
28 a turn at a high rate of speed, and skidded off the road into a field, where the vehicle rolled
multiple times. The CHP determined that Respondent was the owner of the wrecked vehicle.

13. At the hospital, the CHP obtained statements from Respondent and KS. Both parties agreed that Respondent was the driver of the vehicle. Respondent admitted consuming alcohol before driving, and he displayed objective signs of intoxication, including an odor of alcohol, and red and watery eyes. Respondent displayed symptoms of intoxication in horizontal gaze nystagmus and preliminary alcohol screening field sobriety tests. Respondent was arrested for driving under the influence, and submitted to chemical breath tests at about 4:45 a.m., which yielded results of .08% and .09% blood alcohol content (BAC).

14. Respondent sustained minor injuries to the bridge of his nose and hands, while passenger KS sustained major injuries to his hands, arms, chest, and shoulder. Passenger KS also suffered a prolonged loss of consciousness after the collision.

15. In *People v. Austin Alexander Burnsgammage*, Riverside County Superior Court Case No. SWF2300040, Respondent was charged with violating Vehicle Code 23153, subdivision (a) (driving under the influence and causing injury to another person), a felony, and Vehicle Code 23153, subdivision (b) (driving with a 0.08% or greater BAC and causing injury to another, a felony, both with the special allegation/enhancement under Penal Code section 12022.7, subdivision (a), for causing great bodily injury to another person. On June 2, 2023, Respondent pleaded guilty and was convicted of violating Vehicle Code 23153, subdivision (b), a felony, and was sentenced to three years of probation, 90 days in custody consisting of 688 hours of community service, fines of \$2,073, and he was ordered to complete a three-month first offender DUI program, among other terms of probation. The other charges were dismissed.

FIRST CAUSE FOR DISCIPLINE

(June 2, 2023 Criminal Conviction of Driving Under the Influence on December 17, 2022)

16. Respondent is subject to disciplinary action under Code section 4301, subdivisions (k) and (l), because as set forth above, he was convicted of a felony that involved the use of an alcoholic beverage and is substantially related to the practice of a pharmacy technician.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcohol in Dangerous Manner)**

3 17. Respondent is subject to disciplinary action under Code section 4301, subdivision
4 (h), because as set forth above, Respondent used an alcoholic beverage on December 17, 2022, to
5 an extent that was dangerous to himself and others.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct)**

8 18. Respondent's license is subject to disciplinary action under Code section 4301
9 because he engaged in unprofessional conduct as set forth above.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 177652,
14 issued to Austin Alexander Burns-Gammage, aka Austin A. Burns;
- 15 2. Ordering Austin Alexander Burns-Gammage to pay the Board of Pharmacy the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3, and, if placed on probation, the costs of probation monitoring;
18 and,
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20

21
22 DATED: 2/19/2024

Sodergren,
Anne@DCA

Digitally signed by
Sodergren, Anne@DCA
Date: 2024.02.19 13:50:25
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ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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