

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Petition to Revoke
Probation Against:

KHUNNEARY KANG
330 Greenoch Way #A
Stockton, CA 95210

Pharmacy Technician Registration No. TCH
186857

Respondent.

Case No. 7688

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 22, 2024, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Petition to Revoke Probation No. 7688 against Khunneary Kang (Respondent) before the Board. (Petition to Revoke Probation attached as Exhibit A.)

2. On or about February 9, 2023, the Board issued Pharmacy Technician Registration Number TCH 186857 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 7688 and will expire on December 31, 2024, unless renewed.

///

1 3. On or about January 25, 2024, Respondent was served by Certified and First Class
2 Mail copies of Petition to Revoke Probation No. 7688, Statement to Respondent, Notice of
3 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
4 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
5 Professions Code section 4100, is required to be reported and maintained with the Board.

6 Respondent's address of record was and is:

7 330 Greenoch Way #A

8 Stockton, CA 95210.

9 4. Service of the Petition to Revoke Probation was effective as a matter of law under the
10 provisions of Government Code section 11505(c) and/or Business and Professions Code section
11 124.

12 5. Government Code section 11506(c) states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense . . . and the notice shall be deemed a specific denial of all
15 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
16 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
17 discretion may nevertheless grant a hearing.

18 6. The Board takes official notice of its records and the fact that Respondent failed to
19 file a Notice of Defense within 15 days after service upon her of the Petition to Revoke Probation,
20 and therefore waived her right to a hearing on the merits of Petition to Revoke Probation No.
21 7688.

22 7. Government Code section 11520(a) states, in pertinent part:

23 (a) If the respondent either fails to file a notice of defense . . . or to appear at
24 the hearing, the agency may take action based upon the respondent's express
25 admissions or upon other evidence and affidavits may be used as evidence without
26 any notice to respondent

27 8. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
finds that the charges and allegations in Petition to Revoke Probation No. 7688, are separately
and severally, found to be true and correct by a preponderance of the evidence.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Khunneary Kang has subjected
3 her Pharmacy Technician Registration No. TCH 186857 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 Registration based upon the following violation alleged in the Petition to Revoke Probation which
7 is supported by the evidence contained in the Default Decision Investigatory Evidence Packet in
8 this case:

9 a. Failure to comply with Probation Condition 14 in that on or about May 5, 18, and 31,
10 and June 12, 2023, Respondent submitted urine to be tested for the presence of alcohol, and on
11 May 10 and 22, and June 4 and 15, 2023, Respondent's urine tests were positive for Ethyl Sulfate
12 and/or Ethyl Glucuronide, which are metabolites of alcohol and indicate alcohol consumption in
13 the 80 hours prior to submission of the urine sample. In addition, a PEth¹ test was ordered and
14 collected from Respondent on May 17, 2023, with the results reported on May 26, 2023, as
15 positive for the use of alcohol. A positive PEth test indicates use of alcohol in the two to four
16 weeks prior to collection of the sample.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 _____

28 ¹ A PEth test measures the alcohol metabolite, phosphatidylethanol, in whole blood, a different metabolite than those measured in a urine specimen.


ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 186857, issued to Respondent Khunneary Kang, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on May 3, 2024.

It is so ORDERED on April 3, 2024.



Seung W. Oh., Pharm.D.
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

37898614.DOCX
SA2023305498

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

(KHUNNEARY KANG)

1 ROB BONTA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7866
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant
8

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

13 In the Matter of the Petition to Revoke
14 Probation Against:

15 **KHUNNEARY KANG**
16 **330 Greenoch Way #A**
17 **Stockton, CA 95210**

18 **Pharmacy Technician Registration No. TCH**
19 **186857**

20 Respondent.

Case No. 7688

PETITION TO REVOKE PROBATION

21 Complainant alleges:

22 **PARTIES**

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

26 2. On or about February 9, 2023, the Board issued Pharmacy Technician Registration
27 Number TCH 186857 to Khunneary Kang (Respondent). The Pharmacy Technician Registration
28 was in effect at all times relevant to the charges brought herein and will expire on December 31,
2024, unless renewed.

1 **PRIOR DISCIPLINE**

2 3. In a disciplinary action titled "In the Matter of Statement of Issues Against
3 Khunneary Kang aka Khunneary Una," Case No. 7353, the Board issued a decision, effective
4 February 8, 2023, in which Respondent's application for a Pharmacy Technician Registration was
5 granted and Respondent was issued a Pharmacy Technician Registration. However,
6 Respondent's Pharmacy Technician Registration was immediately revoked, the revocation was
7 stayed, and Respondent's Pharmacy Technician Registration was placed on probation for a period
8 of three years with certain terms and conditions. The causes for denial in that matter were due to
9 Respondent sustaining a criminal conviction for DUI with a blood alcohol level of 0.19%, which
10 included driving her vehicle 102 miles per hour in a 65 mile an hour zone, and the dangerous use
11 of alcohol. A copy of that decision is attached as Exhibit A and incorporated by reference.

12 4. At all times after the effective date of Respondent's probation, Condition 17 stated:

13 If respondent has not complied with any term or condition of probation, the
14 Board shall have continuing jurisdiction over respondent, and the Board shall provide
15 notice to respondent that probation shall automatically be extended, until all terms
16 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.

17 If respondent violates probation in any respect, the Board, after giving
18 respondent notice and an opportunity to be heard, may revoke probation and carry out
19 the disciplinary order that was stayed. If a petition to revoke probation or an
20 accusation is filed against respondent during probation, or the preparation of an
21 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.

22 5. Respondent's probation is subject to revocation, in that she violated probation as
23 set forth below.

24 **CAUSE TO REVOKE PROBATION**

25 **(Failure to Abstain From The Use of Alcohol)**

26 6. At all times after the effective date of Respondent's probation, Condition 14 stated:

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

1 prescription issued as a necessary part of treatment. Respondent shall ensure that she
2 is not in the same physical location as individuals who are using illicit substances
3 even if respondent is not personally ingesting the drugs. Any possession or use of
4 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.

5 7. Respondent's probation is subject to revocation for failing to comply with Condition
6 14, referenced above, in that on or about May 5, 18, and 31, and June 12, 2023, Respondent
7 submitted urine to be tested for the presence of alcohol, and on May 10 and 22, and June 4 and
8 15, 2023, Respondent's urine tests were positive for Ethyl Sulfate and/or Ethyl Glucuronide,
9 which are metabolites of alcohol and indicate alcohol consumption in the 80 hours prior to
10 submission of the urine sample. In addition, a PEth¹ test was ordered and collected from
11 Respondent on May 17, 2023, with the results reported on May 26, 2023, as positive for the use
12 of alcohol. A positive PEth test indicates use of alcohol in the two to four weeks prior to
13 collection of the sample.

14 **PRAYER**

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

17 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 7353
18 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician
19 Registration No. TCH 186857 issued to Khunneary Kang; and,

20 2. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 1/22/2024

Sodergren,
Anne@DCA

Digitally signed by Sodergren,
Anne@DCA
Date: 2024.01.22 20:36:20 -08'00'

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

23
24
25
26 SA2023305498
37778665.docx

27
28 ¹ A PEth test measures the alcohol metabolite, phosphatidylethanol, in whole blood, a
different metabolite than those measured in a urine specimen.

Exhibit A

Decision and Order

Board of Pharmacy Case No. 7353

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

In the Matter of the Statement of Issues Against:

KHUNNEARY KANG aka KHUNNEARY UNA, Respondent

Agency Case No. 7353

OAH No. 2022090999

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 February 8, 2023.

It is so ORDERED on January 9, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues Against:

KHUNNEARY KANG, aka KHUNNEARY UNA, Respondent

Agency Case No. 7353

OAH No. 2022090999

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 30, 2022, from Sacramento, California.

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

Khunneary Kang¹ (respondent) appeared without the assistance of an attorney.

¹ At hearing, respondent explained she has never used the surname "Una." In her application, she listed "Lina" as an alternative first name, but it was handwritten and mistaken for Una.

Evidence was received, the record closed, and the matter submitted for decision on November 30, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 9, 2022, the Board received respondent's Pharmacy Technician application. On June 14, 2022, the Board denied respondent's application based on her October 2017 conviction for driving with a blood alcohol content (BAC) of 0.08 percent or greater. On August 9, 2022, the Board received respondent's appeal.

2. On September 6, 2022, complainant signed and thereafter filed the Statement of Issues in her official capacity. Complainant alleges cause to deny respondent's application based on both her conviction and the underlying dangerous use of alcohol. This hearing followed.

Respondent's Conviction

3. On October 30, 2017, in the Superior Court of California, County of Merced, case number 17CR-05042, respondent was convicted, on her plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a BAC of 0.08 percent or greater), a misdemeanor. Respondent also admitted special allegations under Vehicle Code sections 23578 (driving with a BAC of 0.15 percent or greater) and 23582, subdivision (a) (exceeding the speed limit by 30 miles per hour or more while driving with a BAC of 0.08 percent or greater). The court suspended imposition of sentence and placed respondent on probation for three years with conditions

including that she serve 62 days in jail, complete a six-month driving under the influence (DUI) class, and pay fines and fees.

4. The circumstances underlying respondent's conviction occurred on July 8, 2017, when California Highway Patrol (CHP) officers observed respondent speeding and drifting from her lane. The officers confirmed respondent's speed by radar to be 102 miles per hour, conducted a traffic stop, observed objective signs of intoxication, and arrested her. Her BAC was measured to be 0.197 and 0.190 percent, via breath samples administered five minutes apart.

Duties of a Pharmacy Technician

5. Jyoti Kaur has been a licensed pharmacist for approximately 10 years and an inspector for the Board for approximately four years. Before working for the Board, she worked as a retail pharmacist for approximately six years and was the pharmacist-in-charge for approximately three years. She is familiar with the duties of a pharmacy technician. At hearing, she explained that, with supervision, pharmacy technicians perform non-discretionary tasks such as handling and measuring controlled substances and interacting with the public. Based on their responsibilities, the Board expects pharmacy technicians to exercise good judgment, self-control, and honesty. Their tasks often require attention to detail and errors would pose a great risk to the public.

Respondent's Evidence

6. Respondent's arrest and conviction "opened [her] eyes" about the risks of driving under the influence of alcohol. She attended the court-ordered DUI program, through which she realized her choice to drink and drive could have been fatal. She regrets her actions and views them as "one of the worst decisions [she] could've made

in life." She formerly had friends who drove after drinking but has since distanced herself from them. She rarely drinks alcohol anymore, and never to excess. The last time she drank alcohol was approximately one year ago.

7. Respondent earned a certificate in pharmacy technology from Carrington College in November 2021. She has worked as a pharmacy clerk at Walgreen's pharmacy in Stockton, California, for approximately one year. She enjoys the work and hopes to continue her career in the pharmacy field. In her appeal letter to the Board, she described the medical field as "somewhere that [she] can grow and develop [her]self personally and professionally."

Analysis

8. The Board has adopted criteria to evaluate the rehabilitation of applicants convicted of crimes substantially related to the qualifications, functions, and duties of Board licensees. For applicants who have completed their criminal sentences, the criteria include the nature and gravity of the crime, the length of criminal probation, and the terms or conditions of probation and the extent to which they bear on the applicant's rehabilitation. (Cal. Code Regs., tit. 16, §1769, subd. (b)(1).)

9. Respondent's crime was serious. She drove recklessly with an extremely high BAC. In doing so, she jeopardized her own safety and that of the public. "The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

10. Respondent presented evidence of her rehabilitation. She completed the terms of her criminal sentence, including a six-month DUI program, without any violation of probation. Her criminal probation ended in October 2020. Additionally, her

crime, although severe, was an isolated incident that occurred more than five years ago, which is "relatively remote in time." (*Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.)

11. Respondent regrets her criminal conduct and has made changes in her life to avoid similar misconduct. She no longer associates with friends who drink and drive, she uses alcohol only rarely and responsibly, she earned her pharmacy technician certificate, and she has worked as a pharmacy clerk for approximately one year without incident. These efforts are significant because they were not conditions of her criminal sentencing and they largely occurred in the 26 months after her probation ended. "While a candid admission of misconduct and full acknowledgment 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 [respondent] can demonstrate by h[er] sustained conduct over an extended period of time that [s]he is . . . fit to practice." (*In re Conflenti* (1981) 29 Cal.3d 120, 135.)

12. Public protection is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 4001.1.) When the evidence and rehabilitation factors are considered as a whole, respondent established that permitting her to work as a pharmacy technician would be consistent with the Board's public protection mandate. Nevertheless, to ensure that respondent's good conduct continues, her work as a pharmacy technician should be subject to Board supervision. Thus, her application should be granted, subject to the probationary terms included in the Order below.

LEGAL CONCLUSIONS

1. An applicant for a license bears the burden of proving that she should be granted the license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. The Board may deny a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions or duties of a Board licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 4300, subd. (c), 4301, subd. (l).) Pursuant to California Code of Regulations, title 16, section 1770, subdivision (c)(5), respondent's conviction for driving with a BAC of 0.08 percent or greater is substantially related to the qualifications, functions, or duties of a Board licensee because it involved "a conviction for driving under the influence of drugs or alcohol." Cause therefore exists to deny respondent's application for a pharmacy technician license pursuant to Business and Professions Code sections 480, subdivision (a)(1), 4300, subdivision (c), and 4301, subdivision (l), jointly and severally.

3. The Board may deny a license to an applicant who has engaged in unprofessional conduct, including "the use of . . . alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself . . . or to any other person or to the public . . ." (Bus. & Prof. Code, §§ 4300, subd. (c), 4301, subd. (h).) The conduct underlying respondent's conviction involved using alcohol to an extent or in a manner that was dangerous to her and the public. Cause therefore exists to deny respondent's application for a pharmacy technician license pursuant to Business and Professions Code sections 4300, subdivision (c), and 4301, subdivision (h).

4. As discussed in Factual Findings 8 through 12, respondent provided evidence of sufficient rehabilitation to justify granting her application. Nevertheless, to address any concern about respondent's potential risk to public safety, it is appropriate to subject her license to probationary terms, including those related to substance abuse evaluation, treatment, and monitoring, as outlined in the Order below.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a pharmacy technician license, a pharmacy technician license shall be issued to respondent Khunneary Kang and immediately REVOKED; the order of revocation is STAYED, and respondent is placed on probation for three years upon the following terms and conditions:

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information, or indictment;
- a conviction of any crime;

- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician 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 any 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 at two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff:** Respondent shall 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 her probation. Failure to 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 7353 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7353 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every pharmacy of the terms and conditions of the decision in case number 7353 in advance of respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy

employment service to report to the Board in writing acknowledging that she has read the decision in case number 7353 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether respondent is considered an employee, independent contractor, or volunteer.

6. Notification of Change(s) in Name, Address(es) or Phone Number(s):

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

7. 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.

8. 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 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.

9. License Surrender While on Probation/Suspension: Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, 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 respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three 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.

10. Certification Prior to Resuming Work: Respondent shall be suspended, and shall not work as a pharmacy technician, until she 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 she may begin work. Failure to achieve certification within six months of the effective date of this decision 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 considered a violation of probation.

11. 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 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 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 10 days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

12. Drug and Alcohol Testing: Respondent, at her own expense, shall participate in testing 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 may be

required to participate in testing for the entire probation period 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 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 pharmacist until notified by the Board in writing that she 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 her 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.

13. Notification of Departure: Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than 24 hours, respondent shall notify the Board verbally and in writing of the dates of departure and

return. Failure to comply with this provision 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 she 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 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. **Supervised Practice:** Within 30 days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, the name of a

pharmacist licensed by and not on probation with the Board, to serve as respondent's practice supervisor. As part of the documentation submitted, respondent shall cause the proposed practice supervisor to report to the Board in writing acknowledging that her or she has read the decision in case number 7353, and is familiar with the terms and conditions imposed thereby, including the level of supervision required by the Board or its designee. Respondent may have multiple supervisors approved by the Board if necessary to meet respondent's work requirements.

Any of the following shall be considered a violation of probation: failure to timely nominate either an initial or a replacement practice supervisor; failure to cause the practice supervisor to timely report to the Board in writing acknowledging the decision, terms and conditions, and supervision level; practicing in the absence of an approved practice supervisor after lapse of the nomination period; and/or failure to adhere to the level of supervision required by the board or its designee. If any of these obligations or prohibitions is not met, respondent shall be prohibited from practice as a pharmacy technician and may not resume such practice until notified by the Board or its designee in writing.

17. 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.

18. **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: December 2, 2022


[Sean Gavin \(Dec 2, 2022 10:51 PST\)](#)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7866
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant
8

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. 7353

14 **KHUNNEARY KANG, AKA**
15 **KHUNNEARY UNA**

STATEMENT OF ISSUES

16 **Pharmacy Technician Registration**
17 **Applicant**

Respondent.

18
19 **PARTIES**

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

23 2. On or about February 9, 2022, the Board received an application for a Pharmacy
24 Technician Registration from Khunneary Kang; also known as Khunneary Una (Respondent). On
25 or about January 14, 2022, Respondent certified under penalty of perjury to the truthfulness of all
26 statements, answers, and representations in the application. The Board denied the application on
27 June 14, 2022.

28 ///

1 **JURISDICTION**

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

5 4. On or about August 9, 2022, Respondent requested a hearing to appeal the denial of
6 the application.

7 **STATUTORY PROVISIONS**

8 5. Section 480 of the Code states, in pertinent part:

9 (a) Notwithstanding any other provision of this code, a board may deny a
10 license regulated by this code on the grounds that the applicant has been convicted of
11 a crime or has been subject to formal discipline only if either of the following
12 conditions are met:

13 (1) The applicant has been convicted of a crime within the preceding seven
14 years from the date of application that is substantially related to the qualifications,
15 functions, or duties of the business or profession for which the application is made,
16 regardless of whether the applicant was incarcerated for that crime, or the applicant
17 has been convicted of a crime that is substantially related to the qualifications,
18 functions, or duties of the business or profession for which the application is made
19 and for which the applicant is presently incarcerated or for which the applicant was
20 released from incarceration within the preceding seven years from the date of
21 application. . . .

22 6. Section 493 of the Code, effective July 1, 2020, states:

23 (a) Notwithstanding any other law, in a proceeding conducted by a board within the
24 department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related
27 to the qualifications, functions, and duties of the licensee in question, the record of
28 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(C) The nature and duties of the profession.

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

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

7. Section 4300 of the Code states, in pertinent part:

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

...

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. . . .

8. Section 4301 of the Code 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 issued by mistake. Unprofessional conduct includes, 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.

...

(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. . . .

///

1 **REGULATORY PROVISION**

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

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

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

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

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

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

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

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

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

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

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

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

29 **FIRST CAUSE FOR DENIAL OF APPLICATION**

30 **(Criminal Conviction)**

31 10. Respondent's application is subject to denial under sections 480, subdivision (a)(1),
32 4300, subdivision (c), and 4301, subdivision (l), of the Code, in conjunction with California Code
33 of Regulations, title 16, section 1770, in that on or about October 30, 2017, in a criminal
34 proceeding entitled *The People of the State of California v. Khunneary Kang*, in Merced County

1 Superior Court, Case Number 17CR-05042, Respondent was convicted by plea of nolo
2 contendere of violating Vehicle Code section 23152(b) (driving with a .08% blood alcohol
3 content), with enhancements under Vehicle Code sections 23578 (driving with a 0.15% blood
4 alcohol content) and 23582 (driving 30 mph or more over the speed limit), a misdemeanor.
5 Respondent was sentenced to 62 days in jail, placed on 36 months' conditional revocable release,
6 required to attend a six-month driving under the influence (DUI) class, and ordered to pay fines.

7 The circumstances are as follows:

8 a. On or about July 8, 2017, at approximately 4:38 a.m., a California Highway
9 Patrol Officer observed a vehicle driving southbound on Highway 99, in Merced County, at a
10 high speed, well above the 65 mph speed limit. While pursuing the vehicle, the officer observed
11 it drift from side to side. The officer's radar detected the vehicle's speed at 94 and 102 mph. The
12 officer conducted a traffic stop, approached the vehicle, and spoke with the driver, who was
13 identified as Respondent. The officer could smell the odor of an alcoholic beverage emanating
14 from Respondent's vehicle. Once Respondent exited the vehicle, the officer could smell the
15 distinct odor of an alcoholic beverage emitting from Respondent's breath. Respondent admitted
16 to consuming one to two "Heineken beers" between 1 and 1:30 a.m. When asked how
17 Respondent would rate herself on a scale of one to ten, with one being completely sober and ten
18 being fall-over drunk, Respondent stated she was "like an eight or nine." The officer observed
19 Respondent's eyes were red and glossy. Respondent failed to adequately perform field sobriety
20 tests. The officer placed Respondent under arrest and transported her to Mercy Medical Center of
21 Merced where she underwent a blood alcohol test, which revealed her blood alcohol level to be
22 0.197%/0.190%.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Dangerous Use of Alcoholic Beverages to an Extent or in a Manner Dangerous or Injurious**
25 **to Oneself, Others, and the Public)**

26 11. Respondent's application is subject to denial under Code sections 4300, subdivision
27 (c), and 4301, subdivision (h), in that on or about July 8, 2017, Respondent used alcoholic
28

1 beverages to an extent or in a manner dangerous or injurious to herself, others, and the public, as
2 set forth in paragraph 10 above, and its subparts.

3 **PRAYER**

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

- 6 1. Denying the application of Khunneary Kang; also known as Khunneary Una, for a
7 Pharmacy Technician Registration; and
8 2. Taking such other and further action as deemed necessary and proper.

9
10 DATED: 9/6/2022_____

Signature on File

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

11
12
13
14
15 SA2022303696
16
17
18
19
20
21
22
23
24
25
26
27
28