



**California State Board of Pharmacy**  
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Business, Consumer Services and Housing Agency  
 Department of Consumer Affairs  
 Gavin Newsom, Governor



**APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE**

**PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES:**

Name of Licensee: <u>Kiana Ah Mu</u>	Case No. <u>AC 7773</u>
Address of Record: <u>4021 Red Cloud Ln</u> <u>Pilot Hill, CA 95664</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 7773, I hereby request to surrender my pharmacy technician license, License No. 187438. 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, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I 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.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Kiana Ahmu

Applicant's Signature

3/19/2025

Date

Kiana Ah mu

Applicant's Printed Name

187438

Applicant's License Number

\_\_\_\_\_  
Executive Officer's Approval

\_\_\_\_\_  
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 518-3100, 2720 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

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

**KIANA ROSE MARY AH MU, Respondent**

**Agency Case No. 7773**

**OAH No. 2024050215**

**DECISION AFTER REJECTION**

Jeffrey U. Javinar, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 13, 2024, from Sacramento, California.

Katelyn E. Docherty, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Kiana Rose Mary Ah Mu represented herself.

Evidence was received, the record closed, and the matter submitted for decision on June 13, 2024.

The ALJ issued a Proposed Decision on June 20, 2024. On September 19, 2024,

DECISION AFTER REJECTION  
CASE No. 7773

pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision. The Board ordered and subsequently received the transcripts and administrative record of the hearing, and thereafter issued an Order setting January 29, 2025, as the date for the submission of written argument with no new evidence allowed to be presented. Counsel for complainant timely filed written argument; no written argument was submitted on behalf of respondent.

The Board, having reviewed and considered the entire record, including the transcript and exhibits and written argument submitted by complainant, now issues this Decision After Rejection. As set forth herein, the Board agrees that the discipline imposed by the ALJ is supported by the facts, and finds the ALJ's reasoning otherwise sound and persuasive, but has determined that certain modifications to the Proposed Decision are warranted for consistency with the Board's Disciplinary Guidelines, to ensure public protection, and to correct certain nonprejudicial errors and omissions that the Board noted in the Proposed Decision.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On or about April 7, 2022, the Board issued to respondent Pharmacy Technician Registration Number TCH 187438 (license). Her license will expire on August 31, 2025, unless renewed.
2. On April 1, 2024, complainant, acting solely in her official capacity, signed and filed the Accusation. Complainant seeks to discipline respondent's license based

upon her criminal conviction and her dangerous consumption of alcohol.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. All jurisdictional requirements have been met.

4. During hearing, complainant moved to amend the Accusation as follows: amending the reference in Paragraph 10 from "February 4, 2022" on line 1, to "October 5, 2023." Complainant's motion was granted, without objection, and the amendment was made by interlineation.

### **Respondent's Conviction**

5. On October 5, 2023, in Sacramento County Superior Court, case number 23MI015200, respondent pled no contest to, and was convicted of, violating Vehicle Code section 23152, subdivision (b), driving with blood alcohol content (BAC) of 0.08 percent or more (DUI), a misdemeanor, with an admission to the special allegation under Vehicle Code section 23578, having a BAC of 0.15 percent or more. The court suspended imposition of sentence and placed respondent on informal probation for three years with terms and conditions that required her to serve 10 days in jail, obey all laws, complete the high BAC DUI program, and pay fines, restitution, and fees. Respondent completed her jail time through community service.

6. The circumstances underlying respondent's conviction occurred on July 8, 2023. A police officer observed a vehicle weaving and lane straddling. The officer conducted a traffic stop on the vehicle. The vehicle's driver was respondent, whose eyes were glossy and her speech was slurred. The officer observed the vehicle had four

other passengers. Respondent did not adequately perform a series of field sobriety tests. The officer arrested respondent and transported her to jail. Respondent provided a blood sample that confirmed her BAC at 0.19 percent.

## **Pharmacy Technician's Duties**

7. Dr. Steven Kyle has been an inspector for the Board for over nine years and is a licensed pharmacist. At hearing, Dr. Kyle testified that he investigates complaints and performs routine inspections of licensees. He reviewed the information concerning respondent's DUI and is familiar with a pharmacy technician's duties. Dr. Kyle explained that a pharmacy technician is expected to obey all laws and exercise good judgment. Respondent's DUI conviction is concerning because it demonstrates poor judgment, which could ultimately cause patient harm if she continues to engage in dangerous alcohol consumption.

## **Respondent's Evidence**

8. Respondent is 24 years old. She explained she worked hard to obtain her pharmacy technician's license two years ago. She has no history of license discipline. She currently works in the accounting department at Benefit and Risk Management Services, after being terminated as a pharmacy technician due to her DUI offense. Respondent dreamed of working in the medical field and has a passion for helping others. She enjoyed interacting with patients. Respondent hopes to resume working as a pharmacy technician.

9. At hearing, respondent testified she understands the gravity of her conduct. On the night before her arrest, respondent picked up her friends, consumed shots of vodka, then began driving home before the police pulled her over. She felt

lucky that the police pulled her over and prevented her from seriously injuring herself or others. Respondent acknowledged she exercised poor judgment the night of her arrest. She believes the entire situation is a valuable lesson she will never forget. She has never had a problem with alcohol and emphasized that the incident was an anomaly. Respondent expressed remorse for her conduct, accepted responsibility for her actions, and offered no excuses.

10. Respondent's sobriety date is January 2, 2024. She enrolled in the high BAC DUI program at Safety Center, which she completed by April 2024. Through the program, respondent learned the dangers of her actions and vowed not to drink and drive again. Also, respondent completed her community service requirement as part of her criminal sentence. Since her criminal offense, respondent has had no other arrests or convictions.

11. Respondent does not want her past mistakes to prevent her from furthering her goals in the medical field and helping patients. Respondent is willing to abide by any terms to remain practicing as a pharmacy technician, including submitting to alcohol testing and participating in a substance abuse recovery support group.

## **Analysis**

12. The material facts in this matter are not in dispute. Complainant established cause to discipline respondent's license on the grounds alleged in the Accusation.

13. Determining whether to discipline a professional license should be made only after considering a licensee's conduct and any factors introduced in mitigation,

aggravation, and rehabilitation. The licensee “should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.)

14. Under California Code of Regulations, title 16, section 1769, subdivision (c), the Board has adopted criteria for evaluating a licensee’s rehabilitation when considering the suspension or revocation of a license based upon a conviction. The relevant criteria include: nature and gravity of the offense; total criminal record; the time that has elapsed since commission of the act or offense; whether the licensee has complied with the terms of probation; and evidence, if any, of rehabilitation submitted by the licensee.

15. Applying the rehabilitation criteria, respondent exercised poor judgment when she drove her vehicle after consuming alcohol. Her BAC was over twice the legal limit. Respondent credibly testified that she understands that she put herself and the public at risk. She will not repeat the same conduct. Although her conviction is recent, respondent has already completed her DUI program and community service requirements. Respondent’s insight into her wrongdoing and her acceptance of responsibility demonstrate she is prepared to move past her wrongdoing. (See *Seide v. Com. of Bar Examiners* (1989) 49 Cal. 3d 933, 940 [“Fully acknowledging the wrongfulness of [one’s] actions is an essential step towards rehabilitation”].) Respondent is motivated to remain in the medical field and is willing to take all necessary steps to continue practicing as a pharmacy technician.

16. Disciplinary proceedings are not intended to punish the licensee, but to protect the public. When all the evidence is considered, the ALJ found, and the Board

agrees, that respondent established that she has engaged in sufficient rehabilitation since her arrest and conviction to maintain her pharmacy technician license, with terms and conditions to ensure her continued sobriety and to protect the public.

## **Costs**

17. Complainant requested cost reimbursement under Business and Professions Code section 125.3, for \$2,640. Complainant introduced a Certification of Prosecution Costs, certifying under penalty of perjury the amount of pre-hearing prosecution costs the Board incurred. Attached to the Certified Statement of Prosecution Costs was a spreadsheet itemizing the time spent by staff member, date, task, time, hourly rate, and total amount. Respondent indicated her willingness to pay such costs. The reasonableness of costs is addressed below.

## **LEGAL CONCLUSIONS**

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

1. In the Proposed Decision, the ALJ stated that the standard of proof applicable to this proceeding was the "clear and convincing evidence" standard. For the reasons set forth below, the Board finds that the ALJ applied the incorrect standard.

2. In determining the proper standard of proof to apply in license disciplinary proceedings, courts have drawn a distinction between professional licenses and nonprofessional or occupational licenses. In proceedings involving a professional license, such as a pharmacist license, the standard of proof is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence" requires a finding of high probability. It must be

sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

3. However, discipline of a nonprofessional license has a lower proof standard, the “preponderance of the evidence” standard. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.) This is because there is a sharp distinction between professional licenses, which require the fulfillment of extensive education, training, and testing requirements, and nonprofessional licenses, which do not. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *Imports Performance v. Dept. of Consumer Affairs, Bur. Of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

4. Pursuant to Business and Professions Code section 4202, a pharmacy technician license may be issued upon showing the applicant is a high school graduate or possesses a general education development certificate equivalent and has obtained an associate’s degree in pharmacy technology; has completed a course of training specified by the Board; has graduated from a school of pharmacy recognized by the Board; or is certified by a pharmacy technician-certifying organization offering a certification program accredited by the National Commission for Certifying Agencies and approved by the Board. Unlike pharmacists, however, pharmacy technicians are not required to undergo any competency examination. Further, pharmacy technicians are only permitted to perform nondiscretionary tasks that do not require a pharmacist’s professional judgment. (See, Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) Therefore, a pharmacy technician registration is a nonprofessional or occupational license, and, accordingly, the preponderance of the evidence standard is the appropriate standard to apply in this matter. Preponderance of the evidence means “more likely than not” (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1387) or “evidence that has more convincing force than that opposed to it” (*People ex rel. Brown*

*v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567). For each cause of discipline alleged in the Accusation, complainant bears the burden of establishing by a preponderance of the evidence that cause exists to discipline respondent's pharmacy technician registration. (Evid. Code §115.)

5. The Board finds that while as a technical matter, the ALJ erred in applying a higher standard of proof (clear and convincing) to complainant's allegations against respondent, this was not prejudicial error, and the application of the proper, lower standard of proof (preponderance of the evidence) would not have yielded a different result.

### **Applicable Law**

6. Business and Professions Code section 4300 provides that the Board may suspend, revoke, or place any license on probation. Business and Professions Code section 4301 provides that the Board shall act against any license holder who is guilty of unprofessional conduct, including 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. . . .

[¶] . . . [¶]

7. A crime is considered substantially related to a licensed pharmacy technician’s qualifications, functions, or duties “if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by [her] license in a manner consistent with the public health, safety, or welfare.” (Cal. Code Regs., tit. 16, section 1770, subd. (a).) A substantially related crime includes a DUI conviction. (*Id.*, at subd. (c)(5).)

### **Causes for Discipline**

8. The ALJ found, and the Board agrees, that complainant established that on July 8, 2023, respondent used alcohol to an extent and in a manner dangerous and injurious to herself, others, and the public, when she drove erratically with a BAC of 0.19 percent with passengers in the vehicle. Thus, cause exists to discipline respondent’s license under Business and Professions Code section 4301, subdivision (h).

9. The ALJ further found, and the Board agrees, that complainant established that respondent was convicted of a crime substantially related to a licensed pharmacy technician’s qualifications, functions, and duties. On October 5, 2023, respondent was convicted of DUI, a violation of Vehicle Code section 23152, subdivision (b), with an enhancement pursuant to Vehicle Code section 23578. Respondent’s conviction involved alcohol use to an extent or in a manner dangerous to herself and the public, and it evidenced her unfitness to practice consistent with the public health, safety, or welfare; accordingly, her conviction is substantially related pursuant to California Code

of Regulations, title 16, section 1770, subdivisions (a) and (c)(5). Thus, cause exists to discipline respondent's license under Business and Professions Code section 4301, subdivision (l).

### **Costs for Prosecution**

10. An order resolving a disciplinary proceeding in the Board's favor may require the respondent to pay the reasonable costs of investigation and enforcement. (Bus. & Prof. Code, § 125.3, subd. (a).) "A certified copy of the actual costs . . . 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." (Bus. & Prof. Code, § 125.3, subd. (c).)

11. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines to determine whether costs should be assessed in the circumstances of each case. These factors include the licensee's success at hearing in dismissing or reducing the charges, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and appropriateness of the investigation's scope in light of the licensee's alleged conduct. (*Zuckerman v. Bd. of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

12. Here, the ALJ determined that the scope of the investigation was appropriate to the alleged misconduct. The ALJ further determined that respondent was not successful at hearing in having charges dismissed or reduced; that she had no colorable challenge to license revocation; that she did not present any evidence of

financial inability to pay; and that no evidence was introduced to rebut complainant's prima facie evidence of costs incurred. When all the evidence and the relevant *Zuckerman* factors are considered, the ALJ determined that assessing costs of \$2,640 is reasonable and appropriate. Under section 125.3, only an ALJ can order costs to be paid. Accordingly, the costs of \$2,640 ordered by the ALJ are imposed.

## **Conclusion**

13. The Board agrees with the ALJ that cause exists to discipline respondent's pharmacy technician license. The Board further agrees with the ALJ that when all the evidence is considered, respondent has made sufficient efforts toward rehabilitation, which demonstrate that she should be allowed to retain her license, with terms and conditions designed to protect the public health, safety, and welfare. As set forth below, the Board has made certain modifications to the Order for consistency with the Board's Disciplinary Guidelines, to ensure public protection, and to correct certain nonprejudicial errors and omissions that the Board noted in the Proposed Decision.<sup>1</sup>

## **ORDER**

Pharmacy Technician Registration Number TCH 187438 issued to respondent Kiana Rose Mary Ah Mu is REVOKED; however, the revocation is STAYED and respondent is placed on probation for three years upon the following terms and conditions:

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<sup>1</sup> The Board notes that the Board's Disciplinary Guidelines were updated as of January 1, 2025. (See Cal. Code Regs., tit. 16, section 1760, effective January 1, 2025, identifying the current version of the Guidelines as the document entitled "Disciplinary Guidelines" (Rev. 4/2024).) However, given that the Proposed Decision was issued, and rejected by the Board, prior to the effective date of the updated Disciplinary Guidelines, the Board has determined it to be appropriate that the previous version of the Guidelines (Rev. 2/2017) be applied in this Decision After Rejection.

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;
- 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;
- 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 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 (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 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, 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 or probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to cooperate shall be considered a violation of probation.

5. **Reporting of Employment and Notice to Employer:** During the period of probation, respondent shall notify all present and prospective employers of the decision in Case No. 7773 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 her employer(s), and the name(s) and telephone number(s) of all of her 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) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in Case No. 7773 and the 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 respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

If respondent works for or is employed by or through an employment service, respondent must notify the persons described in (a), (b), and (c) above at every entity

licensed by the Board of the decision in Case No. 7773, 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 No. 7773, 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 acknowledgements 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 a 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 \$2,640. 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. 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.

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 her pharmacy technician 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 her 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 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 (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 considered 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 80 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 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:** 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 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 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.

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 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. **Work Site Monitor:** Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the Board or its designee, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board monthly or on another schedule as directed by the Board or its designee. Should the designated work site monitor suspect at any time during the probationary period that respondent has abused alcohol or drugs, he or she shall notify the Board immediately.

In the event of suspected abuse, the monitor shall make at least oral notification within one (1) business day of the occurrence, and shall be followed by written notification within two (2) business days of the occurrence. If, for any reason, including change of employment, respondent is no longer able to be monitored by the approved work site monitor, within ten (10) days respondent shall designate a new work site monitor for approval by the Board or its designee. Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure monthly reports are submitted to the Board by the monitor, shall be considered a violation of probation.

Within thirty (30) days of being approved by the Board or its designee, the work site monitor shall sign an affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at least:

- 1) Have regular face-to-face contact with respondent in the work environment, at least once per week or with greater frequency if required by the Board or its designee;
- 2) Interview other staff in the office regarding respondent's behavior, if applicable; and
- 3) Review respondent's work attendance.

The written reports submitted to the Board or its designee by the work site monitor shall include at least the following information: respondent's name and license number; the monitor's name, license number (if applicable) and work site location; the date(s) the monitor had face-to-face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on any changes in respondent's behavior or personal habits; notes on any indicators that may lead to substance abuse; and the work site monitor's signature.

Respondent shall complete the required consent forms and sign an agreement with the work site monitor and the Board to allow the Board to communicate with the work site monitor.

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 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 indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

This Decision shall become effective at 5:00 p.m. on March 28, 2025.

It is so ORDERED on February 26, 2025.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By 

Seung W. Oh, Pharm.D.  
Board President

DECISION AFTER REJECTION  
CASE No. 7773

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

**In the Matter of the Accusation Against:  
KIANA ROSE MARY AH MU, Respondent**

**Case No. 7773**

**OAH No. 2024050215**

**ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT**

The transcripts (administrative record) of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting Proposed Decision dated September 19, 2024. The California State Board of Pharmacy will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Lupe Baltazar, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or [lupe.baltazar@dca.ca.gov](mailto:lupe.baltazar@dca.ca.gov) on or before **January 29, 2025**.

It is so ORDERED on January 6, 2025.

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 Accusation Against:  
KIANA ROSE MARY AH MU, Respondent**

**Case No. 7773**

**OAH No. 2024050215**

**ORDER REJECTING PROPOSED DECISION**

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on September 19, 2024.

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 Accusation Against:**

**KIANA ROSE MARY AH MU, Respondent**

**Agency Case No. 7773**

**OAH No. 2024050215**

**PROPOSED DECISION**

Jeffrey U. Javinar, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 13, 2024, from Sacramento, California.

Katelyn E. Docherty, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Kiana Rose Mary Ah Mu represented herself.

Evidence was received, the record closed, and the matter submitted for decision on June 13, 2024.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On or about April 7, 2022, the Board issued to respondent Pharmacy Technician Registration Number TCH 187438 (license). Her license will expire on August 31, 2025, unless renewed.

2. On April 1, 2024, complainant, acting solely in her official capacity, signed and filed the Accusation. Complainant seeks to discipline respondent's license based upon her criminal conviction and her dangerous consumption of alcohol.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

4. During hearing, complainant moved to amend the Accusation as follows: amending the reference in Paragraph 10 from "February 4, 2022" on line 1, to "October 5, 2023." Complainant's motion was granted, without objection, and the amendment was made by interlineation.

### **Respondent's Conviction**

5. On October 5, 2023, in Sacramento County Superior Court, case number 23MI015200, respondent pled no contest to, and was convicted of, violating Vehicle Code section 23152, subdivision (b), driving with blood alcohol content (BAC) of 0.08 percent or more (DUI), a misdemeanor, with an admission to the special allegation under Vehicle Code section 23578, having a BAC of 0.15 percent or more. The court

suspended imposition of sentence and placed respondent on informal probation for three years with terms and conditions that required her to serve 10 days in jail, obey all laws, complete the high BAC DUI program, and pay fines, restitution, and fees. Respondent completed her jail time through community service.

6. The circumstances underlying respondent's conviction occurred on July 8, 2023. A police officer observed a vehicle weaving and lane straddling. The officer conducted a traffic stop on the vehicle. The vehicle's driver was respondent, whose eyes were glossy and her speech was slurred. The officer observed the vehicle had four other passengers. Respondent did not adequately perform a series of field sobriety tests. The officer arrested respondent and transported her to jail. Respondent provided a blood sample that confirmed her BAC at 0.19 percent.

### **Pharmacy Technician's Duties**

7. Dr. Steven Kyle has been an inspector for the Board for over nine years and is a licensed pharmacist. At hearing, Dr. Kyle testified that he investigates complaints and performs routine inspections of licensees. He reviewed the information concerning respondent's DUI and is familiar with a pharmacy technician's duties. Dr. Kyle explained that a pharmacy technician is expected to obey all laws and exercise good judgment. Respondent's DUI conviction is concerning because it demonstrates poor judgment, which could ultimately cause patient harm if she continues to engage in dangerous alcohol consumption.

### **Respondent's Evidence**

8. Respondent is 24 years old. She explained she worked hard to obtain her pharmacy technician's license two years ago. She has no history of license discipline. She currently works in the accounting department at Benefit and Risk Management

Services, after being terminated as a pharmacy technician due to her DUI offense. Respondent dreamed of working in the medical field and has a passion for helping others. She enjoyed interacting with patients. Respondent hopes to resume working as a pharmacy technician.

9. At hearing, respondent testified she understands the gravity of her conduct. On the night before her arrest, respondent picked up her friends, consumed shots of vodka, then began driving home before the police pulled her over. She felt lucky that the police pulled her over and prevented her from seriously injuring herself or others. Respondent acknowledged she exercised poor judgment the night of her arrest. She believes the entire situation is a valuable lesson she will never forget. She has never had a problem with alcohol and emphasized that the incident was an anomaly. Respondent expressed remorse for her conduct, accepted responsibility for her actions, and offered no excuses.

10. Respondent's sobriety date is January 2, 2024. She enrolled in the high BAC DUI program at Safety Center, which she completed by April 2024. Through the program, respondent learned the dangers of her actions and vowed not to drink and drive again. Also, respondent completed her community service requirement as part of her criminal sentence. Since her criminal offense, respondent has had no other arrests or convictions.

11. Respondent does not want her past mistakes to prevent her from furthering her goals in the medical field and helping patients. Respondent is willing to abide by any terms to remain practicing as a pharmacy technician, including submitting to alcohol testing and participating in a substance abuse recovery support group.

## Analysis

12. The material facts in this matter are not in dispute. Complainant established cause to discipline respondent's license on the grounds alleged in the Accusation.

13. Determining whether to discipline a professional license should be made only after considering a licensee's conduct and any factors introduced in mitigation, aggravation, and rehabilitation. The licensee "should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.)

14. Under California Code of Regulations, title 16, section 1769, subdivision (c), the Department has adopted criteria for evaluating a licensee's rehabilitation when considering the suspension or revocation of a license based upon a conviction. The relevant criteria include: nature and gravity of the offense; total criminal record; the time that has elapsed since commission of the act or offense; whether the licensee has complied with the terms of probation; and evidence, if any, of rehabilitation submitted by the licensee.

15. Applying the rehabilitation criteria, respondent exercised poor judgment when she drove her vehicle after consuming alcohol. Her BAC was over twice the legal limit. Respondent credibly testified that she understands that she put herself and the public at risk. She will not repeat the same conduct. Although her conviction is recent, respondent has already completed her DUI program and community service requirements. Respondent's insight into her wrongdoing and her acceptance of responsibility demonstrate she is prepared to move past her wrongdoing. (See *Seide v.*

*Com. of Bar Examiners* (1989) 49 Cal. 3d 933, 940 ["Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation".]) Respondent is motivated to remain in the medical field and is willing to take all necessary steps to continue practicing as a pharmacy technician.

16. Disciplinary proceedings are not intended to punish the licensee, but to protect the public. When all the evidence is considered, respondent established that she has engaged in sufficient rehabilitation since her arrest and conviction to maintain her pharmacy technician license, with terms and conditions to ensure her continued sobriety and to protect the public.

## **Costs**

17. Complainant requested cost reimbursement under Business and Professions Code section 125.3, for \$2,640. Complainant introduced a Certification of Prosecution Costs, certifying under penalty of perjury the amount of pre-hearing prosecution costs the Board incurred. Attached to the Certified Statement of Prosecution Costs was a spreadsheet itemizing the time spent by staff member, date, task, time, hourly rate, and total amount. Respondent indicated her willingness to pay such costs. The reasonableness of costs is addressed below.

## **LEGAL CONCLUSIONS**

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

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear

and convincing evidence” requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.) Complainant must meet this burden of proof for each cause for discipline alleged in the Accusation.

## **Applicable Law**

2. Business and Professions Code section 4300 provides that the Board may suspend, revoke, or place any license on probation. Business and Professions Code section 4301 provides that the Board shall act against any license holder who is guilty of unprofessional conduct, including 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. . . .

[¶] . . . [¶]

3. A crime is considered substantially related to a licensed pharmacy technician's qualifications, functions, or duties "if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by [her] license in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, section 1770, subd. (a).) A substantially related crime includes a DUI conviction. (*Id.*, at subd. (c)(5).)

### **Causes for Discipline**

4. Complainant established that on July 8, 2023, respondent used alcohol to an extent and in a manner dangerous and injurious to herself, others, and the public, when she drove erratically with BAC of 0.19 percent with passengers in the vehicle. Thus, cause exists to discipline respondent's license under Business and Professions Code section 4301, subdivision (h).

5. Complainant established that respondent was convicted of a crime substantially related to a licensed pharmacy technician's qualifications, functions, and duties. On October 5, 2023, respondent was convicted of DUI, a violation of Vehicle Code section 23152, subdivision (b), with an enhancement pursuant to Vehicle Code section 23578. Respondent's conviction involved alcohol use to an extent or in a manner dangerous to herself and the public, and it evidenced her unfitness to practice consistent with the public health, safety, or welfare; accordingly, her conviction is substantially related pursuant to California Code of Regulations, title 16, section 1770, subdivisions (a) and (c)(5). Thus, cause exists to discipline respondent's license under Business and Professions Code section 4301, subdivision (l).

## Costs for Prosecution

6. An order resolving a disciplinary proceeding in the Board's favor may require the respondent to pay the reasonable costs of investigation and enforcement. (Bus. & Prof. Code, § 125.3, subd. (a).) "A certified copy of the actual costs . . . 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." (Bus. & Prof. Code, § 125.3, subd. (c).)

7. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines to determine whether costs should be assessed in the circumstances of each case. These factors include the licensee's success at hearing in dismissing or reducing the charges, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and appropriateness of the investigation's scope in light of the licensee's alleged conduct. (*Zuckerman v. Bd. of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

8. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent was not successful at hearing in having charges dismissed or reduced. She had no colorable challenge to license revocation. She did not present any evidence of financial inability to pay. No evidence was introduced to rebut complainant's prima facie evidence of costs incurred. When all the evidence and the relevant *Zuckerman* factors are considered, assessing costs of \$2,640 is reasonable and appropriate.

## Conclusion

9. Cause exists to discipline respondent's pharmacy technician license.

When all the evidence is considered, respondent has made sufficient efforts toward rehabilitation, which demonstrate that she should be allowed to retain her license, with terms and conditions designed to protect the public health, safety, and welfare.

## ORDER

Pharmacy Technician Registration Number TCH 187438 issued to respondent Kiana Rose Mary Ah Mu is REVOKED; however, the 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 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;
- 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;

- 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 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 (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 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, 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 or probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to cooperate shall be considered a violation of probation.

5. **Reporting of Employment and Notice to Employer:** During the period of probation, respondent shall notify all present and prospective employers of the decision in OAH No. 2024050215 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 her employer(s), and the name(s) and telephone number(s) of all of her 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 her direct supervisor, pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in OAH No. 2024050215 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 OAH No. 2024050215 in advance of the respondent commencing work at each pharmacy. 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 a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in OAH No. 2024050215 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 the respondent is considered an employee, independent contractor or volunteer.

**6. Notification of a 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 \$2,640. 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 work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician 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 the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within ten (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 (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. **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 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 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.

12. **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.

13. **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.

14. **Work Site Monitor:** Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the Board or its designee, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board monthly or on another schedule as directed by the Board or its designee. Should the designated work site monitor suspect at any time during the probationary period that respondent has abused alcohol or drugs, he or she shall notify the Board immediately.

In the event of suspected abuse, the monitor shall make at least oral notification within one (1) business day of the occurrence, and shall be followed by written notification within two (2) business days of the occurrence. If, for any reason, including change of employment, respondent is no longer able to be monitored by the approved work site monitor, within ten (10) days respondent shall designate a new work site monitor for approval by the Board or its designee. Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure monthly reports are submitted to the Board by the monitor, shall be considered a violation of probation.

Within thirty (30) days of being approved by the Board or its designee, the work site monitor shall sign an affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at least:

1) Have regular face-to-face contact with respondent in the work environment, at least once per week or with greater frequency if required by the Board or its designee;

2) Interview other staff in the office regarding respondent's behavior, if applicable; and

3) Review respondent's work attendance.

The written reports submitted to the Board or its designee by the work site monitor shall include at least the following information: respondent's name and license number; the monitor's name, license number (if applicable) and work site location; the date(s) the monitor had face-to-face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on any changes in respondent's behavior or personal habits; notes on any indicators that may lead to substance abuse; and the work site monitor's signature.

Respondent shall complete the required consent forms and sign an agreement with the work site monitor and the Board to allow the board to communicate with the work site monitor.

15. **Violation of Probation:** If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and 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.

16. **Completion of Probation:** Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATE: June 20, 2024



JEFFREY U. JAVINAR

Administrative Law Judge

Office of Administrative Hearings

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7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7773

13 **KIANA ROSE MARY AH MU**  
14 4021 Red Cloud Lane  
Pilot Hill, CA 95664

**ACCUSATION**

15 **Pharmacy Technician License No. TCH**  
16 **187438**

17 Respondent.

18  
19  
20 **PARTIES**

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

23 2. On or about April 7, 2022, the Board of Pharmacy issued Pharmacy Technician  
24 Number License TCH 187438 to Kiana Rose Mary Ah Mu (Respondent). The Pharmacy  
25 Technician License was in full force and effect at all times relevant to the charges brought herein  
26 and will expire on August 31, 2025, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

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

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

8 5. Code section 4300 states, in pertinent part:

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

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

12 (1) Suspending judgment.

13 (2) Placing him or her upon probation.

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

15 (4) Revoking his or her license.

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

18 (e) The proceedings under this article shall be conducted in accordance with  
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
19 Government Code, and the board shall have all the powers granted therein. The  
20 action shall be final, except that the propriety of the action is subject to review by the  
superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

21 6. Code section 4300.1, states:

22 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
23 by operation of law or by order or decision of the board or a court of law, the  
placement of a license on a retired status, or the voluntary surrender of a license by a  
24 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  
25 a decision suspending or revoking the license.

26 **STATUTORY PROVISIONS**

27 7. Section 4301 of the Code states, in pertinent part:

28 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 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.

...

(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...

### **COST RECOVERY**

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

### **FIRST CAUSE FOR DISCIPLINE**

#### **(Conviction of Substantially Related Crime)**

9. Respondent is subject to disciplinary action under Code section 4301, subdivision (l), in that she was convicted of crime that is substantially related to the functions, qualifications and duties of a pharmacy technician. The circumstances are as follows.



1 **OTHER MATTERS**

2 13. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician  
3 License Number TCH 187438 issued to Kiana Rose Mary Ah Mu, shall be prohibited from  
4 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a  
5 licensee for five years if Pharmacy Technician License Number TCH 187438 is placed on  
6 probation or until Pharmacy Technician License Number TCH 187438 is reinstated if it is  
7 revoked.

8 **PRAYER**

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

11 1. Revoking or suspending Pharmacy Technician License Number TCH 187438, issued  
12 to Kiana Rose Mary Ah Mu;

13 2. Prohibiting Kianna Rose Mary Ah Mu from serving as a manager, administrator,  
14 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy  
15 Technician License Number TCH 187438 is placed on probation or until Pharmacy Technician  
16 License Number TCH 187438 is reinstated if it is revoked

17 3. Ordering Kiana Rose Mary Ah Mu to pay the Board of Pharmacy the reasonable costs  
18 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
19 section 125.3; and, if placed on probation, the costs of probation monitoring; and,

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

21  
22 DATED: 4/1/2024

Digitally signed by  
Sodergren, Anne@DCA  
Date: 2024.04.01 16:10:08  
-07'00'

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

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