

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

In the Matter of the Accusation Against:

UNIQUE DESTINY ANDRADE, Respondent

Pharmacy Technician Registration No. TCH 151102

Agency Case No. 7826

OAH No. 2024091089

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on May 14, 2025.

It is so ORDERED on April 14, 2025.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh", written over a horizontal line.

Seung W. Oh, Pharm.D.
Board President

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No. TCH 151102, Respondent**

Agency Case No. 7826

OAH No. 2024091089

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 11, 2024, by videoconference.

Diana Petikyan, Deputy Attorney General, Department of Justice, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (board), Department of Consumer Affairs.

Unique Destiny Andrade, respondent, represented herself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 11, 2024.

SUMMARY

Complainant sought to discipline respondent's pharmacy technician license based on a criminal conviction of driving under the influence of alcohol (DUI). Respondent had an earlier alcohol-related conviction that the board addressed with a citation and fine. The evidence in this case supported disciplining respondent's license. However, revocation is not warranted and would be excessively punitive given the evidence of respondent's rehabilitation. Therefore, respondent's license is placed on three years' probation with an order to abstain from alcohol and drugs, and with drug and alcohol monitoring.

FACTUAL FINDINGS

Jurisdictional Matters

1. The board issued Pharmacy Technician License No. TCH 151102 to respondent on October 7, 2015. The license was in full force and effect at the time of the hearing and will expire on January 31, 2025, unless renewed.

2. Complainant issued the accusation against respondent's license on July 25, 2024. The accusation alleged three causes for discipline: (1) respondent was convicted of a substantially related crime on January 11, 2023, (2) respondent used alcohol to an extent dangerous to herself or others based on the underlying circumstances of her January 11, 2023, conviction, and (3) respondent was convicted of more than one misdemeanor or felony involving the consumption of alcohol in violation of Business and Professions code section 4301, subdivision (k). The accusation further alleged disciplinary considerations that respondent had previously

been cited on May 21, 2020, for violation of Business and Professions code section 4301, subdivision (h), and that respondent incurred an earlier conviction on March 17, 2021, for driving under the influence of alcohol. The accusation and required jurisdictional documents were served on respondent, who filed a timely notice of defense. This hearing followed.

January 2023 Conviction and Underlying Incident

3. On May 3, 2022, at 1:02 a.m., a Vernon police officer initiated a traffic stop after respondent was observed driving in the opposite lane of travel. The officer observed respondent having signs of alcohol intoxication, including unsteady gait, slurred and incoherent speech, and erratic demeanor. Respondent admitted she had been drinking. Preliminary alcohol screening showed blood alcohol concentrations of 0.234 and 0.217 percent. A blood sample was taken; later testing showed a blood alcohol concentration of 0.23 percent.

4. A misdemeanor complaint was filed on November 3, 2022, in the Superior Court of California, County of Los Angeles, in Case No. 02ES01360, alleging violations of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, and section 23152, subdivision (b), driving with a blood alcohol concentration of 0.08 percent or greater. The complaint also alleged an additional penalty enhancement under Vehicle Code section 23578, driving with a blood alcohol concentration of 0.15 percent or more.

5. On January 11, 2023, respondent pled nolo contendere to one count of violating Vehicle Code section 23152, subdivision (b). Respondent admitted to an earlier DUI conviction in Los Angeles Superior Court Case No. 0DN02680. Respondent was placed on summary probation for 48 months, ordered to serve 96 hours in

custody with credit for four days, to pay fines, fees, and restitution of \$540, with some credit for optional performance of 26 hours of community service. Respondent was ordered to enroll in a second offender alcohol program and a victim impact program.

6. Respondent testified and submitted documents showing she completed the required community service in September 2023 and the DUI program in July 2024. She testified she has paid all fines, fees, and other conditions of her criminal probation.

7. Respondent did not deny any of the underlying facts of this incident and conviction. She testified that her boyfriend jumped out of the car, and she was trying to find him. She was "not in a good headspace" at the time.

Prior Board Discipline – 2020 Citation and Fine

8. On May 21, 2020, the board's enforcement manager, Lupe Baltazar, issued Citation No. 2019 87003 to respondent. The citation referenced respondent's arrest on January 15, 2020, and her nolo contendere plea and conviction on March 17, 2020, of violating Vehicle Code section 23152, subdivision (b). The citation assessed a fine of \$750.

9. Respondent admitted all the underlying facts of the 2020 incident and conviction. She testified that she was young and very irresponsible at the time. She never meant to hurt anyone, but she was not thinking.

Expert Testimony of Diane Mahone, Pharm.D.

10. Diane Hong Mahone, Pharm.D., RPH 62498, is an inspector for the board. She has been a hospital pharmacy director, pharmacy manager, and hospital pharmacist-in-charge.

11. Dr. Mahone testified that pharmacy technicians have access to protected health information, dangerous drugs and devices. They must demonstrate professional conduct. She testified that respondent's two drunk driving convictions show a pattern of lapses in judgment that can impact her work in the pharmacy.

Rehabilitation Evidence

12. Respondent testified that she has changed a lot since these incidents. She does not "drink that way" anymore. She was 23 when she was first arrested and 25 in the second incident. When she has a bad day, she journals and walks her dog; she does not resort to alcohol. She is focused on her work as a pharmacy technician and is trying to become a manager. This is the only job she has held since high school. She testified that she loves the patients, and they love her. She has set a goal to move out of her parents' home and get her own place. She learned from the Alcoholics Anonymous (A.A.) meetings that she can lose everything if she resorts to alcohol. She continued to go to A.A. meetings for a few months after her court requirement ended.

13. On cross-examination, respondent denied that she is a social drinker but admitted she still drinks alcohol occasionally. Her last time was in the month before the hearing for a baby shower. She does not feel she needs to attend A.A. meetings anymore. She does not have a sponsor. She estimated the last time she attended an A.A. meeting was the beginning of 2024. She does not want to lose her job; she realizes that she could potentially hurt or kill someone if she drinks and drives. She testified, "I don't want to kill somebody."

14. Nicholas Mendoza, Pharm.D., submitted a letter supporting respondent. He stated that he has worked with her for approximately seven years. He has "seen her grow from a shy young girl to a confident seasoned pro." She is "the best customer

service person I have ever worked with." She "knows almost every single patient by name and greets everyone with warmth and kindness." She "always strives to help everyone, no matter how difficult or time consuming the problem may be. Her coworkers all love her."

Enforcement Cost Recovery

15. The Deputy Attorney General submitted a declaration supporting complainant's cost recovery claim. The declaration showed work of the Attorney General's Office through November 25, 2024. Attached to the declaration was a report detailing the work performed, the person performing the work, the time and amount charged to the board for the service. The total enforcement costs were \$2,839.75. Complainant did not offer any evidence of investigation costs. The declaration satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and supports a finding that costs in the amount of \$2,839.75 are reasonable in both the nature and extent of the work performed.

16. Respondent was given the opportunity to present evidence concerning her ability to pay the costs. She testified that she has \$13,000 in credit card debt that she is trying to pay off while living with her parents. She also helps her father with household expenses.

LEGAL CONCLUSIONS

Legal Authority

1. A pharmacy technician license, also sometimes referred to as a "registration" is a nonprofessional occupational license; it does not require rigorous

training, and the technician performs nondiscretionary tasks. Therefore, the applicable standard of proof is a preponderance of the evidence. (See, *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) Complainant bears the burden of proving a basis for discipline. (Evid. Code, § 500.) Respondent must prove rehabilitation by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Business and Professions Code¹ section 490 authorizes the board to discipline a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the license. Section 4301 authorizes the board to impose discipline upon a license for unprofessional conduct. Subdivision (l) defines unprofessional conduct as having a conviction of a crime substantially related to the qualifications, functions, or duties of a licensee. California Code of Regulations, title 16, section 1770, subdivision (a), states that a crime or act shall be considered substantially related to the qualifications, functions, or duties of the license if to a substantial degree it evidences present or potential unfitness to perform the functions authorized by the license in a manner consistent with public health, safety, or welfare. A crime involving a conviction for driving under the influence of drugs or alcohol is substantially related. (Cal. Code Regs., tit. 16, § 1770, subd. (c)(5).)

3. Respondent was convicted of driving with an excessive amount of alcohol in her system, placing herself and the public in danger. The conviction is substantially related to the qualifications, functions, or duties of a pharmacy

¹ All further statutory references are to the Business and Professions Code unless otherwise stated.

technician. Cause exists to impose discipline upon respondent's registration based on sections 490, 4301 and California Code of Regulations, title 16, section 1770, subdivision (c)(5).

4. Section 4301, subdivision (h), defines unprofessional conduct to include the use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or the public. Cause exists to impose discipline on respondent's license based on this subdivision.

5. Section 4301, subdivision (k) provides that unprofessional conduct includes:

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

6. Cause exists to impose discipline on respondent's license based on section 4301, subdivision (k) because she has incurred two alcohol-related convictions.

Evaluation of Disciplinary Remedy

7. Cause for discipline having been established, the remaining issue is what form of discipline is required to protect the public. Protection of the public "shall be paramount." (§ 4001.1.) The purpose of a licensing proceeding "is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent." (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

8. The board has established disciplinary guidelines to be considered when evaluating potential discipline. (Disciplinary Guidelines, A Manual of Disciplinary Guidelines and Model Disciplinary Orders (Feb. 2017 Rev.)). In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the relevant factors include the nature and severity of the acts; actual or potential harm to the public; actual or potential harm to any consumer; time passed since the act(s); aggravating and mitigating evidence; and rehabilitation evidence. (Disciplinary Guidelines at p. 4.)

9. In this case, respondent drove a vehicle under the influence of alcohol on two occasions resulting in criminal convictions. She risked harm to herself and to others with her poor decision-making. Respondent satisfied all terms and conditions of her criminal probation. She was 23 at the time of her first arrest and 25 at the time of her second arrest. The board gave her a break on the first conviction by issuing a citation instead of seeking to revoke her license. The board is legitimately concerned that respondent's second conviction shows that she has not learned her lesson.

10. Respondent testified she has learned from the incidents and now moderates her drinking. She has not stopped drinking alcohol completely. She does not continue to make use of an alcohol recovery program; she feels she does not need it, and that she can manage stress and avoid drinking to excess through journaling. She is highly motivated to keep the only job she has had since high school and to advance in her career to a management position. She appears to be an excellent pharmacy technician with superior customer service skills. There was no evidence that respondent's irresponsible drinking directly impacted her work as a pharmacy technician, though it does show a lack of judgment.

11. According to the board's Disciplinary Guidelines, this is a Category II case. The minimum discipline is revocation stayed and three years of probation. The maximum is revocation of the license. Based on the evidence in this case, revocation is not warranted and would unnecessarily punish respondent. The appropriate discipline to protect the public is to place respondent's license on probation for three years with an order to abstain from drug and alcohol use and drug and alcohol monitoring.

Costs of Enforcement

12. The board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. The board may not assess the full costs of investigation and prosecution when doing so will unfairly penalize a licensee who has used the hearing process to obtain dismissal of charges or a reduction in the discipline imposed. (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

13. In *Zuckerman*, the Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his/her position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; (4) whether the licensee had the financial ability to make payments; and (5) and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation the court considered in *Zuckerman* contains substantially the same language as that set forth in Business and Professions Code section 125.3.

14. Here, respondent used the hearing process to reduce the severity of the discipline imposed, since complainant sought revocation of her license. Respondent presented evidence that, because of her debts, the costs in this case will cause a financial hardship.

15. The appropriate cost award for this case is a 30 percent reduction in the total costs to eliminate the potential for financial punishment to respondent for raising colorable and good faith defenses.

16. The claimed costs of \$2,839.75 are reduced by 30 percent to \$1,988.

ORDER

Pharmacy Technician License No. TCH 151102, issued to Unique Destiny Andrade, is revoked; however, the revocation is stayed, and respondent's license is placed on probation for three years on 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, no contest, or similar, 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 such occurrence shall be considered a violation of probation.

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

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

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

4. **Cooperate with Board Staff.** Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of 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 of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. **Reporting of Employment and Notice to Employers.** During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7826 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 number 7826, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 7826 and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 7826, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number, and the terms and conditions

imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

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

6. Notification of Changes in Name, Address, or Phone Numbers.

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

7. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$1,988. 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 or 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 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.** Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the board within ten (10) days of receipt. Failure to maintain active, current certification or to timely submit proof of same 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 60 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.

13. **Violation of Probation.** If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

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

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

15. **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.

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.

16. **Notification of Departure.** Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

17. **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.

18. **No Ownership or Management of Licensed Premises.** Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board during the period of probation. Respondent shall sell or transfer any legal or beneficial

interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

DATE: January 8, 2025

Alan R. Alvord

ALAN R. ALVORD

Administrative Law Judge

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

12 In the Matter of the Accusation Against:

Case No. 7826

13 **UNIQUE DESTINY ANDRADE**
8803 Elmont Avenue
14 Downey, CA 90240

ACCUSATION

15 Pharmacy Technician License No. TCH
151102

16 Respondent.
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19 **PARTIES**

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

22 2. On or about October 7, 2015, the Board issued Pharmacy Technician License Number
23 TCH 151102 to Unique Destiny Andrade (Respondent). The Pharmacy Technician License was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 January 31, 2025, unless renewed.

26 **JURISDICTION**

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

1 4. Section 4300 states:

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

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

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

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

8 (4) Revoking his or her license.

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

11 (c) The board may refuse a license to any applicant guilty of unprofessional
12 conduct. The board may, in its sole discretion, issue a probationary license to any
13 applicant for a license who is guilty of unprofessional conduct and who has met all
 other requirements for licensure. The board may issue the license subject to any
 terms or conditions not contrary to public policy, including, but not limited to, the
 following:

14 (1) Medical or psychiatric evaluation.

15 (2) Continuing medical or psychiatric treatment.

16 (3) Restriction of type or circumstances of practice.

17 (4) Continuing participation in a board-approved rehabilitation program.

18 (5) Abstention from the use of alcohol or drugs.

19 (6) Random fluid testing for alcohol or drugs.

20 (7) Compliance with laws and regulations governing the practice of pharmacy.

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

24 (e) The proceedings under this article shall be conducted in accordance with
25 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
26 Government Code, and the board shall have all the powers granted therein. The
 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.

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5. Section 4300.1 states:

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

STATUTORY PROVISIONS

6. Section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been 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.

• • • •

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

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

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1 7. Section 4307 states:

2 (a) Any person who has been denied a license or whose license has been
3 revoked or is under suspension, or who has failed to renew his or her license while it
4 was under suspension, or who has been a manager, administrator, owner, member,
5 officer, director, associate, partner, or any other person with management or control
6 of any partnership, corporation, trust, firm, or association whose application for a
7 license has been denied or revoked, is under suspension or has been placed on
8 probation, and while acting as the manager, administrator, owner, member, officer,
9 director, associate, partner, or any other person with management or control had
10 knowledge of or knowingly participated in any conduct for which the license was
11 denied, revoked, suspended, or placed on probation, shall be prohibited from serving
12 as a manager, administrator, owner, member, officer, director, associate, partner, or in
13 any other position with management or control of a licensee as follows:

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

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

19 (b) "Manager, administrator, owner, member, officer, director, associate,
20 partner, or any other person with management or control of a license" as used in this
21 section and Section 4308, may refer to a pharmacist or to any other person who serves
22 in such capacity in or for a licensee.

23 (c) The provisions of subdivision (a) may be alleged in any pleading filed
24 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
25 the Government Code. However, no order may be issued in that case except as to a
26 person who is named in the caption, as to whom the pleading alleges the applicability
27 of this section, and where the person has been given notice of the proceeding as
28 required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
29 the Government Code. The authority to proceed as provided by this subdivision shall
30 be in addition to the board's authority to proceed under Section 4339 or any other
31 provision of law.

32 REGULATORY PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

14 **COST RECOVERY**

15 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
16 law judge to direct a licensee found to have committed a violation or violations of the licensing
17 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
18 case.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of a Substantially Related Crime)**

21 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
22 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
23 Respondent was convicted of a crime substantially related to the qualifications, functions or
24 duties of a pharmacy technician. Specifically, on or about January 11, 2023, after pleading nolo
25 contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code
26 section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in her
27 blood] in the criminal proceeding entitled *The People of State of California v. Unique Destiny*
28 *Andrade* (Super. Ct. L.A. County, 2023, No. 2ES01360.) The court sentenced Respondent to

1 serve 96 hours in jail, ordered her to enroll in and complete an 18-month second offender alcohol
2 program, and placed her on 48 months' probation, with terms and conditions. The circumstances
3 surrounding the conviction are that on or about May 3, 2022, police officers conducted an
4 enforcement stop after Respondent was driving on the wrong side of the road. While speaking to
5 Respondent, an officer could smell the odor of alcohol emitting from her person and observed her
6 to exhibit an unsteady gait, slurred speech, and watery eyes and she was speaking in incoherent
7 sentences. Respondent subsequently submitted to a series of field sobriety tests which she was
8 unable to performed as indicated. During the booking procedure that followed, Respondent
9 provided a blood sample that revealed a blood alcohol content level of 0.23%.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the
13 grounds of unprofessional conduct, in that on or about May 3, 2022, Respondent used alcoholic
14 beverages to an extent or in a manner dangerous or injurious to herself, any person, or the public.
15 Complainant refers to, and by this reference incorporates, the allegations set forth above in
16 paragraph 10, as though fully set forth herein.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Alcohol Related Convictions)**

19 12. Respondent is subject to disciplinary action under section 4301, subdivision (k), on the
20 grounds of unprofessional conduct, in that on or about January 11, 2023, Respondent sustained a
21 second alcohol related conviction. Complainant refers to, and by this reference incorporates, the
22 allegations set forth above in paragraph 10 and 13, subparagraph (b) below, as though fully set
23 forth herein.

24 **DISCIPLINE CONSIDERATIONS**

25 13. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges as follows:

- 27 a. On or about May 21, 2020, in a prior action, the Board issued Citation No. CI 2019 87003 to
28 Respondent for violating section 4301, subdivision (h) resulting in a \$750.00 fine.

Respondent has complied with the Citation. The facts and circumstances underlying the citation are that on or about January 15, 2020, Respondent drove a vehicle while under the influence of alcohol.

b. On or about March 17, 2021, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in her blood] in the criminal proceeding entitled *The People of State of California v. Unique Destiny Andrade* (Super. Ct. L.A. County, 2021, No. 0DN02680.)

OTHER MATTERS

14. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician License Number TCH 151102 issued to Unique Destiny Andrade, Unique Destiny Andrade shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician License Number TCH 151102 is placed on probation or until Pharmacy Technician License Number TCH 151102 is reinstated if it is revoked.

PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 151102, issued to Unique Destiny Andrade;

2. Prohibiting Unique Destiny Andrade from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician License Number TCH 151102 is placed on probation or until Pharmacy Technician License Number TCH 151102 is reinstated if Pharmacy Technician License Number TCH 151102 issued to Unique Destiny Andrade is revoked;

3. Ordering Unique Destiny Andrade to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of probation monitoring; and,

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

DATED: 7/25/2024

Sodergren,
Anne@DCA

Digitally signed by
Sodergren, Anne@DCA
Date: 2024.07.25 09:26:45
-07'00'

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

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