

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

In the Matter of the Statement of Issues Against:

ATHENA MICHELLE BREWER, Respondent

Agency Case No. 7252

OAH No. 2022040634

DECISION AFTER REJECTION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 18, 2022, by videoconference from Sacramento, California.

Seth Curtis, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Office of the Board of Pharmacy (the Board), Department of Consumer Affairs. Athena Brewer (respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 18, 2022. On June 17, 2022, ALJ issued a Proposed Decision.

On July 28, 2022, pursuant to section 11517 of the Government Code, the California State Board of Pharmacy ("Board") issued an Order Rejecting the June 17, 2022 Proposed Decision and notified the parties that written argument would be allowed on a schedule to be determined after receipt of transcript of the hearing was available. On November 18, 2022, the Board issued an order notifying the parties that the deadline for submitting

written argument was set for December 19, 2022. Written argument was timely received from the complainant but the respondent did not submit written argument.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument from the complainant, now issues this decision after rejection.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 7, 2021, respondent signed and filed an application with the Board to obtain a pharmacy technician registration in the State of California. The Board denied the application on February 8, 2022. Respondent timely appealed and requested a hearing.

2. On March 24, 2022, complainant signed and filed the Statement of Issues, in her official capacity. The Statement of Issues alleges two grounds for the denial of respondent's application. First, in 2018, respondent was convicted of the substantially related crime of driving under the influence of alcohol (DUI) with a blood alcohol content (BAC) of 0.08 percent or greater. Second, respondent consumed alcohol to the extent or in a manner that was dangerous to herself or to the public.

Criminal Conviction

3. On July 27, 2018, in the Alameda County Superior Court, Case No. 18-CR-004949, respondent pled no contest to, and was convicted of, violating Penal Code section 23152, subdivision (b) (driving with a BAC of 0.08 percent or higher), a misdemeanor. Imposition of sentencing was suspended and respondent was placed on probation for three years. She was also ordered to serve two days in jail, pay fines and fees, and complete a nine-month First Offender DUI program.

4. The circumstances underlying the conviction are that, on December 12, 2017, respondent was in a collision with another vehicle. The Oakland police officer who

responded to the scene observed two damaged vehicles, with respondent sitting in the driver's seat of her vehicle, which was still running and in gear. Respondent admitted she was intoxicated and had consumed Hennessy earlier. Her eyes were bloodshot and watery, her speech was slurred, and the odor of alcohol emanated from her person. The officer also observed a half-full bottle of Hennessy, with the top removed, inside the cab of the vehicle. Respondent's BAC was subsequently determined to be 0.23 percent.

Duties of a Pharmacist Technician

5. Louisa Tsoi is an inspector for the Board. She has been a licensed pharmacist for 30 years, primarily in a retail setting. She was a pharmacy manager for over 10 years, supervising pharmacy technicians on a daily basis. Ms. Tsoi explained a pharmacy technician assists the pharmacist in the operation of the pharmacy, processes and fills prescriptions, conducts inventory, and interacts directly with customers. Pharmacy technicians also have regular access to controlled substances.

Respondent's Evidence

6. Respondent is 41 years old. She is single and the mother of a young child.¹ She previously served as an aircraft mechanic in the United States Army, receiving an honorable discharge in 2002.

7. Respondent described her DUI as an isolated incident, asserting she had no prior issue with alcohol. That morning, her partner became violent and "put his hands" on her. She went to a friend's house and consumed alcohol "as an escape." When she left, she did not want to go home because her partner was still there. She did not recall the specifics of the vehicle collision. Although respondent could not recall the specifics of the vehicle collision, she denied that she had been drinking while driving, or drinking in her vehicle after the collision. She recalled putting the Hennessy bottle in the car, explaining "I must have forgotten to put the cap back on."

¹ The child's age was not part of the record.

8. At the time of the DUI incident, respondent was attending the aviation maintenance program at the Aviation Institute of Maintenance in Oakland. She graduated from the program, and was conferred certification as an Aviation Mechanic Technician, on June 10, 2018. However, she could not obtain an aircraft mechanic's license due to her DUI conviction. Shortly thereafter, respondent relocated to Modesto and purchased a house. She then enrolled in the pharmacy technician program at the Institute of Technology. At the time of enrollment, she disclosed her DUI conviction and was advised it would not impact her employability. She graduated from the program in August 2021.

9. Since August 2021, respondent has worked as an unlicensed pharmacy clerk for CVS Pharmacy. She disclosed her conviction upon her hire and also underwent a background check, but she did not disclose to CVS that her application for licensure had been denied. Respondent's duties include answering phones, data entry, and distributing completed prescriptions to customers. She does not count medications nor fill prescription bottles. Respondent is seeking licensure so she can perform the full duties of a pharmacy technician.

10. Respondent completed the court-ordered First Offender DUI course, paid fines and fees, and complied with all other terms of her probation. She was released from probation in July 2021. She has not yet petitioned for expungement of her conviction pursuant to Penal Code section 1203.4, citing costs.

11. Aside from the court-ordered course, respondent has not sought counseling or treatment for substance abuse and has not attended Alcoholics Anonymous (AA) or other self-help groups. She has not consumed any alcohol since the date of her arrest, over five years ago. Respondent's abstention from alcohol since her DUI was established solely by her uncorroborated testimony. Shortly after her arrest, she obtained a restraining order against, and has had no further contact with, her ex-partner.

Presently, respondent has a close and supportive relationship with her father, who also lives with her in Modesto. Respondent did not testify about any other support

mechanism or group.

12. Respondent submitted a letter of support, dated April 27, 2022, from her pharmacy technician instructor, Nafisa Jaghuri. In her letter, Ms. Jaghuri confirmed respondent excelled in the program and received high praise from her preceptors for her "attendance, professionalism, and skilled performance." Ms. Jaghuri is aware of respondent's DUI and asserts respondent "has now improved her life tremendously and profoundly regrets her previous actions."

Analysis

13. The evidence established that on July 27, 2018, respondent was convicted. At the time of the underlying incident, respondent drove her vehicle under the influence of alcohol and with a BAC of 0.23 percent, nearly three times the legal limit, and culminating in a collision with another vehicle.

14. The Board's disciplinary guidelines state the Board's view that there should be no tolerance for licensees "who, in the absence of appropriate evidence of rehabilitation, personally abuse drugs or alcohol." (Disciplinary Guidelines at p. 1.) The Guidelines further state that "[f]or pharmacy technicians . . . , the board believes an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and that if revocation is not imposed that a minimum Category III level of discipline should be imposed." (Disciplinary Guidelines at p.4.)

15. In addition to recommended appropriate penalties, the Board's Disciplinary Guidelines contain standard terms of probation and optional terms of probation, including particular terms related to substance abuse. The pharmacy profession is a dynamic patient-centered practice that can produce stressful situations and triggers that must be navigated in an appropriate manner by pharmacy professionals, including pharmacy technicians. Similar to driving a vehicle when impaired, working in a pharmacy while impaired can present substantial safety concerns for consumers. Respondent testified that she was

drinking as an escape due to anxiety, and she was going to drink that day to deal with her situation. Some of the Board's optional conditions for substance abuse convictions are designed to ensure that respondents are operating without a substance abuse problem and receive tools to help identify and evaluate triggers and develop appropriate coping mechanisms for all stressful and anxious situations with a strong support network. The Board also is concerned that a single conviction of DUI with such a high blood alcohol content (almost three times the legal limit) may not be a one time occurrence but represent the first time someone may have been caught. For those reasons, the Board ordinarily does not exclude its optional conditions related to substance abuse absent strong evidence of rehabilitation and a corroborated sobriety date.

16. Respondent's violation constitutes a Category III violation. The Disciplinary Guidelines include a recommended discipline range from a minimum of revocation stayed, 90 day actual suspension, probation for three to five years, and all standard terms and appropriate optional terms, to a maximum of revocation. Generally, the disciplinary guideline specify that discipline against a pharmacy technician should be revocation, or in this case denial of the license.

17. "A Board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation." (Bus. & Prof. Code § 493, subd. (b)(2); see also, *Arneson v. Fox* (1980) 28 Cal.3d 440, 449, citing *Brandt v. Fox* (1979) 90 Cal.App.3d 737 [an applicant "should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation"].) Factors to be considered in determining whether an applicant has made a requisite showing of rehabilitation include the nature of the offense, the passage of time since the offense, compliance with probation or parole, and other evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1769, subd. (b).)

18. The nature and gravity of respondent's crime were very serious. In December 2017, upset and distraught after her ex-partner physically abused her, respondent escaped

to a friend's house and consumed alcohol as a means to handle the anxiety from her situation. Afraid to return home, she made another very poor decision to drive her vehicle with a BAC of 0.23 percent and crashed into a parked vehicle with little memory of how the accident transpired. Since her arrest nearly five years ago, respondent has not consumed any alcohol. She graduated from her aviation mechanics program and successfully completed her pharmacy technician program. She distanced herself from her ex-partner by obtaining a restraining order and relocating to Modesto. They have had no contact since. Respondent's testimony was the sole evidence supporting the rehabilitation findings, including her abstention date from alcohol, and was uncorroborated by other evidence.

19. Respondent accepted responsibility for her misconduct. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 [fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation].) She found gainful employment and was honest with her employer regarding her conviction history. She successfully completed her criminal probation and has had no further arrests or convictions. However, respondent's criminal probation ended in July 2021 and her application for licensure has been pending since the end of her criminal probation. An accurate determination of one's rehabilitation necessarily requires a period of evaluation when she is not on probation. (In re Gossage (2000) 23 Cal.4th 1080, 1089.).

20. The Board and the public expect a pharmacy technician to act with good judgment, responsibility, maturity, integrity and without substance abuse issues. When all the evidence is considered in light of the Board's criteria, respondent established she has engaged in sufficient rehabilitation since her conviction to not justify the complete denial of her pharmacy technician license but to receive a pharmacy technician license, with terms and conditions designed and necessary to protect the public. However, given the recent DUI conviction with a very high blood alcohol level, lack of medical evaluation or other evidence showing a strong support network and corroborated sobriety date, the evidence does not support deviating from the Board's established substance abuse optional conditions. Although drug and

alcohol testing may be costly, respondent testified that submitting to urine tests would not be an issue for her. Under established procedures, the respondent may always petition the Board later for a modification of penalty or early termination of probation pursuant to Business and Professions Code section 4309.

LEGAL CONCLUSIONS

Burden of Proof

1. Respondent has the burden of proving that she qualifies for a pharmacy technician license in California. (*Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) In other words, respondent must prove that it is more likely than not that she qualifies for the license. (*People ex. Rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. Pursuant to Business and Professions Code section 480, subdivision (a)(1), the Board may deny a license on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. [¶] . . . [¶]

(3)(A) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Board may deny a license pursuant to this subdivision only if the crime is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

3. Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license 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.

4. Pursuant to Business and Professions Code section 493, “. . . in a Proceeding . . . to deny an application for a license . . . upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.”

5. In California Code of Regulations, title 16, section 1770, the Board has stated that a crime will be “considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare.”

6. Respondent’s DUI conviction is substantially related to the qualifications, functions and duties of a pharmacy technician in that it evidences respondent’s present or potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety, or welfare. Convictions involving alcohol consumption reflect a lack of sound, professional and personal judgment. (See *Griffiths v.*

Superior Court (2002) 96 Cal.App.4th 757, 770.)

Cause for Denial

7. As set forth in Factual Findings 3 and 4, cause exists to deny respondent's application pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3)(A), in conjunction with California Code of Regulations, title 16, section 1770. Respondent's DUI conviction is substantially related to the qualifications, functions and duties of a pharmacy technician.

8. As set forth in Factual Findings 3 and 4, cause exists to deny respondent's application pursuant to Business and Professions Code section and 4301, subdivisions (h) and (l). Respondent engaged in unprofessional conduct when, on December 12, 2017, she consumed alcohol in a manner dangerous to herself or others.

9. As set forth in Factual Findings 6 through 17, respondent has made commendable efforts toward rehabilitation, and demonstrated she should be granted a probationary pharmacy technician license, with standard and appropriate optional terms and conditions designed and necessary to protect the public health, safety and welfare.

ORDER

Respondent Athena Michelle Brewer's application for a pharmacy technician registration is GRANTED. Upon satisfaction of all statutory and regulatory requirements for issuance of a pharmacy technician registration, a pharmacy technician registration shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. **Obey All Laws:** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence: an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime;
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

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

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

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

4. **Cooperate with Board Staff:** Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. **Reporting of Employment and Notice to Employers:** During the period of probation, respondent shall notify all present and prospective employers of the decision in Case No. 7252 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in Case No. 7252 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in Case No. 7252 in advance of respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in Case No. 7252 and the terms and conditions imposed thereby. It shall be

respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

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

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

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

8. Status of License: Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions

thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. **License Surrender While on Probation/Suspension:** Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her 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 respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. **Certification Prior to Resuming Work:** Respondent shall be suspended, and shall not work as a pharmacy technician, until she has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the Board, and has been notified by the Board or its designee that she may begin work. Failure to achieve certification within six months of the effective date of this decision shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by

the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

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

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

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

11. **Practice Requirement – Extension of Probation:** Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 30 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the Board in writing within 10 days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall

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

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

12. **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.

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

14. **Clinical Diagnostic Evaluation:** Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter if required by the board or its designee,

respondent shall undergo, at her own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the board or its designee. The approved evaluator shall be provided with a copy of the board's statement of issues and decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions, listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board or its designee that practice may resume.

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

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.

16. **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.

17. **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.

This Decision shall become effective at 5:00 p.m. on March 23, 2023.

It is so ORDERED on February 21, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

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ATHENA MICHELLE BREWER, Respondent

Agency Case No. 7252

OAH No. 2022040634

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The 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 the Proposed Decision dated June 17, 2022. In addition to any arguments the parties may wish to submit, the board is particularly interested in arguments directed to the question whether the discipline is appropriate under the circumstances. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov on or before **December 19, 2022**.

It is so ORDERED on November 18, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues Against:

ATHENA MICHELLE BREWER, Respondent

Agency Case No. 7252

OAH No. 2022040634

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.

Although the right of the parties to submit argument is not limited, the board is particularly interested in arguments directed to the question whether the discipline is appropriate under the circumstances and whether the probationary conditions are appropriate. 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 July 28, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues Against:

ATHENA MICHELLE BREWER, Respondent

Agency Case No. 7252

OAH No. 2022040634

PROPOSED DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 18, 2022, by videoconference from Sacramento, California.

Seth Curtis, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Office of the Board of Pharmacy (the Board), Department of Consumer Affairs.

Athena Brewer (respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 18, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 7, 2021, respondent signed and filed an application with the Board to obtain a pharmacy technician registration in the State of California. The Board denied the application on February 8, 2022. Respondent timely appealed and requested a hearing.

2. On March 24, 2022, complainant signed and filed the Statement of Issues, in her official capacity. The Statement of Issues alleges two grounds for the denial of respondent's application. First, in 2018, respondent was convicted of the substantially related crime of driving under the influence of alcohol (DUI) with a blood alcohol content (BAC) of 0.08 percent or greater. Second, respondent consumed alcohol to the extent or in a manner that was dangerous to herself or to the public.

Criminal Conviction

3. On July 27, 2018, in the Alameda County Superior Court, Case No. 18-CR-004949, respondent pled no contest to, and was convicted of, violating Penal Code section 23152, subdivision (b) (driving with a BAC of 0.08 percent or higher), a misdemeanor. Imposition of sentencing was suspended and respondent was placed on probation for three years. She was also ordered to serve two days in jail, pay fines and fees, and complete a nine-month First Offender DUI program.

4. The circumstances underlying the conviction are that, on December 12, 2017, respondent was in a collision with another vehicle. The Oakland police officer who responded to the scene observed two damaged vehicles, with respondent sitting in the driver's seat of her vehicle, which was still running and in gear. Respondent

admitted she was intoxicated and had consumed Hennessy earlier. Her eyes were bloodshot and watery, her speech was slurred, and the odor of alcohol emanated from her person. The officer also observed a half-full bottle of Hennessy, with the top removed, inside the cab of the vehicle. Respondent's BAC was subsequently determined to be 0.23 percent.

Duties of a Pharmacist Technician

5. Louisa Tsoe is an inspector for the Board. She has been a licensed pharmacist for 30 years, primarily in a retail setting. She was a pharmacy manager for over 10 years, supervising pharmacy technicians on a daily basis. Ms. Tsoe explained a pharmacy technician assists the pharmacist in the operation of the pharmacy, processes and fills prescriptions, conducts inventory, and interacts directly with customers. Pharmacy technicians also have regular access to controlled substances.

Respondent's Evidence

6. Respondent is 41 years old. She is single and the mother of a young child.¹ She previously served as an aircraft mechanic in the United States Army, receiving an honorable discharge in 2002.

7. Respondent described her DUI as an isolated incident, asserting she had no prior issue with alcohol. That morning, her partner became violent and "put his hands" on her. She went to a friend's house and consumed alcohol "as an escape." When she left, she did not want to go home because her partner was still there. She did not recall the specifics of the vehicle collision. Respondent denied that she had

¹ The child's age was not part of the record.

been drinking while driving, or drinking in her vehicle after the collision. She recalled putting the Hennessy bottle in the car, explaining "I must have forgotten to put the cap back on."

8. At the time of the DUI incident, respondent was attending the aviation maintenance program at the Aviation Institute of Maintenance in Oakland. She graduated from the program, and was conferred certification as an Aviation Mechanic Technician, on June 10, 2018. However, she could not obtain an aircraft mechanic's license due to her DUI conviction. Shortly thereafter, respondent relocated to Modesto and purchased a house. She then enrolled in the pharmacy technician program at the Institute of Technology. At the time of enrollment, she disclosed her DUI conviction and was advised it would not impact her employability. She graduated from the program in August 2021.

9. Since August 2021, respondent has worked as an unlicensed pharmacy clerk for CVS Pharmacy. She disclosed her conviction upon her hire and also underwent a background check. Respondent's duties include answering phones, data entry, and distributing completed prescriptions to customers. She does not count medications nor fill prescription bottles. Respondent is seeking licensure so she can perform the full duties of a pharmacy technician.

10. Respondent completed the court-ordered First Offender DUI course, paid fines and fees, and complied with all other terms of her probation. She was released from probation in July 2021. She has not yet petitioned for expungement of her conviction pursuant to Penal Code section 1203.4, citing costs.

11. Aside from the court-ordered course, respondent has not sought counseling or treatment for substance abuse and has not attended Alcoholics

Anonymous (AA) or other self-help groups. She has not consumed any alcohol since the date of her arrest, over five years ago. Shortly after her arrest, she obtained a restraining order against, and has had no further contact with, her ex-partner. Presently, respondent has a close and supportive relationship with her father, who also lives with her in Modesto.

12. Respondent submitted a letter of support, dated April 27, 2022, from her pharmacy technician instructor, Nafisa Jaghuri. In her letter, Ms. Jaghuri confirmed respondent excelled in the program and received high praise from her preceptors for her "attendance, professionalism, and skilled performance." Ms. Jaghuri is aware of respondent's DUI and asserts respondent "has now improved her life tremendously and profoundly regrets her previous actions."

Analysis

13. The evidence established that on July 27, 2018, respondent was convicted. At the time of the underlying incident, respondent drove her vehicle under the influence of alcohol and with a BAC of 0.23 percent, nearly three times the legal limit, and culminating in a collision with another vehicle.

14. "A Board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation." (Bus. & Prof. Code § 493, subd. (b)(2); see also, *Arneson v. Fox* (1980) 28 Cal.3d 440, 449, citing *Brandt v. Fox* (1979) 90 Cal.App.3d 737 [an applicant "should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation"].) Factors to be considered in determining whether an applicant has made a requisite showing of rehabilitation include the nature of the offense, the

passage of time since the offense, compliance with probation or parole, and other evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1769, subd. (b).)

15. The nature and gravity of respondent's crime were serious. In December 2017, upset and distraught after her ex-partner physically abused her, respondent escaped to a friend's house and consumed alcohol. Afraid to return home, she made a very poor decision to drive her vehicle with a BAC of 0.23 percent. Since her arrest nearly five years ago, respondent has not consumed any alcohol. She graduated from her aviation mechanics program and successfully completed her pharmacy technician program. She distanced herself from her ex-partner by obtaining a restraining order and relocating to Modesto. They have had no contact since.

16. Respondent accepted responsibility for her misconduct. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 [fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation].) She found gainful employment and was honest with her employer regarding her conviction history. She successfully completed her criminal probation and has had no further arrests or convictions. The evidence established respondent's DUI was an isolated incident which is unlikely to recur.

17. The Board and the public expect a pharmacy technician to act with good judgment, responsibility, maturity and integrity. When all the evidence is considered in light of the Board's criteria, respondent established she has engaged in sufficient rehabilitation since her conviction to receive a pharmacy technician license, with terms and conditions designed to protect the public. The Board requested additional terms of probation including abstention, biological fluid testing, and attendance at AA or a similar support group. However, given this was an isolated incident, respondent has

nearly five years of sobriety, and there has been no other troubling conduct, these terms are unwarranted and unduly burdensome.

LEGAL CONCLUSIONS

Burden of Proof

1. Respondent has the burden of proving that she qualifies for a pharmacy technician license in California. (*Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) In other words, respondent must prove that it is more likely than not that she qualifies for the license. (*People ex. Rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. Pursuant to Business and Professions Code section 480, subdivision (a)(1), the Board may deny a license on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

[¶] . . . [¶]

(3)(A) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Board may deny a license pursuant to this subdivision only if the crime is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

3. Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license 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.

4. Pursuant to Business and Professions Code section 493, “. . . in a proceeding

. . . to deny an application for a license . . . upon the ground that the applicant or the licensee has been convicted of a

crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.”

5. In California Code of Regulations, title 16, section 1770, the Board has stated that a crime will be “considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare.”

6. Respondent’s DUI conviction is substantially related to the qualifications, functions and duties of a pharmacy technician in that it evidences respondent’s present or potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety, or welfare. Convictions involving alcohol consumption reflect a lack of sound, professional and personal judgment. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.)

Cause for Denial

7. As set forth in Factual Findings 3 and 4, cause exists to deny respondent’s application pursuant to Business and Professions Code section 480, subdivisions (a)(1)

and (a)(3)(A), in conjunction with California Code of Regulations, title 16, section 1770. Respondent's DUI conviction is substantially related to the qualifications, functions and duties of a pharmacy technician.

8. As set forth in Factual Findings 3 and 4, cause exists to deny respondent's application pursuant to Business and Professions Code section and 4301, subdivisions (h) and (l). Respondent engaged in unprofessional conduct when, on December 12, 2017, she consumed alcohol in a manner dangerous to herself or others.

9. As set forth in Factual Findings 6 through 17, respondent has made commendable efforts toward rehabilitation, and demonstrated she should be granted a probationary pharmacy technician license, with terms and conditions designed to protect the public health, safety and welfare.

ORDER

Respondent Athena Michelle Brewer's application for a pharmacy technician registration is GRANTED. Upon satisfaction of all statutory and regulatory requirements for issuance of a pharmacy technician registration, a pharmacy technician registration shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime;
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

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

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

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

4. **Cooperate with Board Staff:** Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. **Reporting of Employment and Notice to Employers:** During the period of probation, respondent shall notify all present and prospective employers of the decision in Case No. 7252 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in Case No. 7252 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner

at every pharmacy of the terms and conditions of the decision in Case No. 7252 in advance of respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in Case No. 7252 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

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

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

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

8. **Status of License:** Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

9. **License Surrender While on Probation/Suspension:** Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her 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 respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. **Certification Prior to Resuming Work:** Respondent shall be suspended, and shall not work as a pharmacy technician, until she has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the Board, and has been notified by the Board or its designee that she may begin work. Failure to achieve certification within six months of the effective date of this decision shall be considered a violation of probation.

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

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

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect

of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

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

11. **Practice Requirement – Extension of Probation:** Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 30 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

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

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive

and non-consecutive months, exceeding 36 months. The Board or its designee may post a notice of the extended probation period on its website.

12. **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.

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

DATE: June 17, 2022



TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings

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Attorney General of California
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Supervising Deputy Attorney General
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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against: Case No. 7252
13 **ATHENA MICHELLE BREWER**
14 **Pharmacy Technician Registration Applicant, STATEMENT OF ISSUES**
15 Respondent.
16

17
18 **PARTIES**

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

22 2. On or about September 8, 2021, the Board received an application for a Pharmacy
23 Technician Registration from Athena Michelle Brewer (Respondent). On or about September 7,
24 2021, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The Board denied the application on February 8, 2022.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c) of the Code provides, in pertinent part, that the Board
6 may refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole
7 discretion, issue a probationary license to any applicant for a license who is guilty of
8 unprofessional conduct and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 480 of the Code provides, in pertinent part:

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

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

22

23 (b) Notwithstanding any other provision of this code, a person shall not be denied a
24 license on the basis that the person has been convicted of a crime, or on the basis of acts
25 underlying a conviction for a crime, if that person has obtained a certificate of
26 rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3
27 of the Penal Code, has been granted clemency or a pardon by a state or federal executive,
28 or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a
license on the basis of any conviction, or on the basis of the acts underlying the
conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a,
1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or
expungement. An applicant who has a conviction that has been dismissed pursuant
to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of
the dismissal if it is not reflected on the report furnished by the Department of Justice.

1 (d) Notwithstanding any other provision of this code, a board shall not deny a license
2 on the basis of an arrest that resulted in a disposition other than a conviction, including an
arrest that resulted in an infraction, citation, or a juvenile adjudication.

3 (e) A board may deny a license regulated by this code on the ground that the applicant
4 knowingly made a false statement of fact that is required to be revealed in the application
5 for the license. A board shall not deny a license based solely on an applicant's failure to
disclose a fact that would not have been cause for denial of the license had it been
disclosed.

6 ...

7 6. Section 493 of the Code provides, in pertinent part:

8 (a) Notwithstanding any other law, in a proceeding conducted by a board
9 within the department pursuant to law to deny an application for a license or to
10 suspend or revoke a license or otherwise take disciplinary action against a person
11 who holds a license, upon the ground that the applicant or the licensee has been
convicted of a crime substantially related to the qualifications, functions, and duties
12 of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact.

13 (b)(1) Criteria for determining whether a crime is substantially related to the
14 qualifications, functions, or duties of the business or profession the board regulates
shall include all of the following:

15 (A) The nature and gravity of the offense.

16 (B) The number of years elapsed since the date of the offense.

17 (C) The nature and duties of the profession.

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

20 (c) As used in this section, "license" includes "certificate," "permit,"
21 "authority," and "registration."

22 ...

23 7. Section 4301 of the Code provides, in pertinent part:

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

26 ...

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

1 dangerous or injurious to oneself, to a person holding a license under this chapter, or
2 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.

3 ...

4 (l) The conviction of a crime substantially related to the qualifications,
5 functions, and duties of a licensee under this chapter. The record of conviction of a
6 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
7 States Code regulating controlled substances or of a violation of the statutes of this
8 state regulating controlled substances or dangerous drugs shall be conclusive
9 evidence of unprofessional conduct. In all other cases, the record of conviction shall
10 be conclusive evidence only of the fact that the conviction occurred. The board may
11 inquire into the circumstances surrounding the commission of the crime, in order to
12 fix the degree of discipline or, in the case of a conviction not involving controlled
13 substances or dangerous drugs, to determine if the conviction is of an offense
14 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.

15 ...

16 **REGULATIONS**

17 8. California Code of Regulations (CCR), title 16, section 1769, provides, in
18 pertinent part:

19 ...

20 (b) Denial of a license.

21 (1) When considering the denial of a facility or personal license under Section
22 480 of the Business and Professions Code on the grounds that the applicant has been
23 convicted of a crime, the board will consider whether the applicant made a showing
24 of rehabilitation if the applicant completed the criminal sentence at issue without a
violation of parole or probation. In making this determination, the board will consider
the following criteria:

25 (A) The nature and gravity of the crime(s).

26 (B) The length(s) of the applicable parole or probation period(s).

27 (C) The extent to which the applicable parole or probation period was shortened
28 or lengthened, and the reason(s) the period was modified.

1 (D) The terms or conditions of parole or probation and the extent to which they
2 bear on the applicant's rehabilitation.

3 (E) The extent to which the terms or conditions of parole or probation were
4 modified, and the reason(s) for modification.

5 (2) If the applicant has not completed the criminal sentence at issue without a
6 violation of parole or probation, or the board determines that the applicant did not
7 make the showing of rehabilitation based on the criteria in paragraph (1) or the denial
8 is based on professional misconduct, the board will apply the following criteria in
9 evaluating an applicant's rehabilitation:

10 (A) The nature and gravity of the act(s), professional misconduct, or crime(s)
11 under consideration as grounds for denial.

12 (B) Evidence of any act(s), professional misconduct, or crime(s) committed
13 subsequent to the act(s), professional misconduct, or crime(s) under consideration as
14 grounds for denial under Section 480 of the Business and Professions Code.

15 (C) The time that has elapsed since commission of the act(s), professional
16 misconduct, or crime(s) referred to in subparagraph (A) or (B).

17 (D) Whether the applicant has complied with any terms of parole, probation,
18 restitution or any other sanctions lawfully imposed against the applicant.

19 (E) The criteria in paragraphs (1)(A) through (E), as applicable.

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

22 ...

23 9. CCR, title 16, section 1770, states:

24 For the purpose of denial, suspension, or revocation of a personal or facility
25 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
26 Professions Code, a crime or act shall be considered substantially related to the
27 qualifications, functions or duties of a licensee or registrant if to a substantial degree
28 it evidences present or potential unfitness of a licensee or registrant to perform the
functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

FIRST CAUSE FOR DENIAL OF APPLICATION

(July 27, 2018, Criminal Conviction for Driving Under the Influence)

10 10. Respondent's application is subject to denial under Code sections 4300, subdivision
11 (c), 4301, subdivision (l), and 480, subdivision (a)(1), in that on or about July 27, 2018, in a
12 criminal proceeding entitled *People v. Athena Michelle Brewer* in Alameda County Superior

1 Court, case number 18-CR-004949, Respondent was convicted on her plea of nolo contendere of
2 violating Penal Code section 23152, subdivision (b) (driving with a blood alcohol content of .08%
3 or higher), a misdemeanor. The parties stipulated that Respondent's blood alcohol content was
4 .23%. The circumstances are that on or about December 12, 2017, an Oakland Police Department
5 officer responded to the site of a collision and observed two damaged vehicles. Respondent was
6 observed sitting in vehicle 1, which was stilling running and in gear. Respondent made statements
7 that she was intoxicated and admitted to drinking "Hennessy". A half-empty bottle of Hennessy
8 was found inside Respondent's vehicle with the top off. As a result of her conviction, Respondent
9 was sentenced to probation for three years, ordered to serve two days in county jail, pay certain
10 fines and fees, and complete a 9-month DUI program.

11 **SECOND CAUSE FOR DENIAL OF APPLICATION**

12 (Dangerous Use of Alcoholic Beverages)

13 11. Respondent's application is subject to denial under Code sections 4300, subdivision
14 (c), and 4301, subdivision (h), in that, as set forth in paragraph 10, on or about December 12,
15 2017, Respondent consumed alcoholic beverages to the extent, or in a manner, as to be dangerous
16 or injurious to herself and the public.

17 **PRAYER**

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

- 20 1. Denying the application of Athena Michelle Brewer for a Pharmacy Technician
21 Registration;
- 22 2. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 3/24/2022

Signature on File

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

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