

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

In the Matter of the Statement of Issues Against:

GER XIONG, Respondent

Agency Case No. 7312

OAH No. 2022080488

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on February 8, 2023.

It is so ORDERED on January 9, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues against:

GER XIONG, Respondent

Case No. 7312

OAH No. 2022080488

PROPOSED DECISION

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, by videoconference from Sacramento, California, on November 8, 2022.

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

Ger Xiong (respondent) represented himself.

Evidence was received and the hearing concluded on November 8, 2022. The record remained open through November 14, 2022, to allow respondent to submit supportive documents and to allow for the submission of any objections to those documents. Respondent timely submitted four documents, which were marked as

Exhibits 1 through 4 and admitted into evidence as administrative hearsay. The record was closed, and the matter was submitted for decision on November 14, 2022.

FACTUAL FINDINGS

1. On September 28, 2021, the Board received an application for a pharmacy technician registration from respondent. On April 12, 2022, the Board denied respondent's application based on his conviction of a crime substantially related to the qualifications, functions, or duties of a licensee and the underlying conduct that led to that conviction, as described below. Respondent timely appealed the Board's denial and requested an administrative hearing to contest the decision. On or about August 4, 2022, complainant filed the Statement of Issues in her official capacity. This hearing followed.

Complainant's Evidence

RESPONDENT'S CONVICTION

2. On November 2, 2021, in the Superior Court of California, County of Sacramento, Case No. 20MI016783, respondent, on a plea of guilty, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content above 0.08 percent (DUI), a misdemeanor. The conviction included an admission to the special allegations for one prior DUI conviction, occurring on January 30, 2011, and for having a blood alcohol content of 0.15 percent or higher. The court placed respondent on 48 months of informal probation and ordered him to serve 27 days in jail or satisfy the equivalent through the county work release program. The court also ordered him to complete a second offender DUI program, and to pay related fines and fees.

3. The incident underlying respondent's 2021 DUI conviction occurred on October 12, 2020. Peace officers observed respondent driving a vehicle that had major damage to the driver's side of the vehicle and appeared to have recently been involved in a traffic accident. The officers performed an enforcement stop and discovered that respondent had red and watery eyes and emitted a strong odor of alcoholic beverages. Respondent admitted to the officers he consumed cognac earlier that day and the officers discovered two open bottles of cognac in respondent's vehicle. Respondent failed to successfully complete field sobriety tests as instructed and was arrested for DUI.

TESTIMONY OF CONNIE TANG

4. Connie Tang has been a licensed pharmacist since 2010 and spent the first six years of her career working in retail pharmacies. Ms. Tang's responsibilities as a retail pharmacist included being present to support the overall operation of the pharmacy, working closely with pharmacy technicians and clerks in assisting customers, filling prescriptions, and communicating with physicians and patients regarding prescriptions.

5. Since April 2016, Ms. Tang has worked for the Board as an inspector. She inspects hospital and wholesale pharmacies, investigates consumer complaints, reviews the criminal histories of licensees and applicants, and makes recommendations as to whether they are fit for licensure.

6. Ms. Tang testified that pharmacy technicians play a critical role in the pharmacy, as they have significant and primary contact with customers, process telephonic prescription orders, fill prescriptions, and assist patients with prescription verifications and questions. She emphasized that a pharmacy technician, like many

positions in the healthcare field, must possess certain “necessary qualities.” Honesty, trustworthiness, and sound judgment are paramount to the position, as pharmacists and customers rely on them heavily. A pharmacy technician’s ability to understand and comply with rules and regulations is extremely important as the industry is highly regulated and mistakes represent a significant risk to the public.

7. Ms. Tang reviewed the exhibits in this case prior to the hearing. This included respondent’s conviction records, the police report describing the conduct that led to respondent’s most recent DUI conviction, and a February 10, 2022 Investigation Report prepared by former Board inspector Brynn Thomison, which substantiated the denial of respondent’s application. While reviewing that information, Ms. Tang discovered that, on July 12, 2017, respondent was also convicted in the San Joaquin County Superior Court, of violating Vehicle Code section 14601.2, subdivision (a), driving while license suspended for DUI. Ms. Tang opined that respondent’s criminal history indicates he is not currently fit for licensure as a pharmacy technician, as it suggests he lacks sound judgment and an ability to comply with the law. She noted that respondent’s most recent DUI reflects that he has acted recklessly and in disregard for his own safety and the safety of the public as driving while under the influence of alcohol represents a serious risk to public safety.

Respondent’s Evidence

RESPONDENT’S TESTIMONY

8. Respondent is a single parent with two adult-age children, ages 18 and 21, who he continues to support. He testified that his criminal history reflects that he made poor choices “when [he] was younger” that may make him seem unfit for licensure. He has encountered several personal and financial difficulties and has

worked hard on self-improvement. He knows that through his continued commitment toward his goals, his personal and financial setbacks will improve.

9. Regarding his 2021 DUI conviction, respondent testified that he was not intending to drive on the night he got into a traffic accident and was arrested. However, a close friend contacted him that day and informed him that she had been the victim of domestic violence. Respondent drove his vehicle after consuming alcohol to meet with his friend in need. He drove at an excessive speed and his vehicle slid off the road and "hit something," causing significant damage to the vehicle. Respondent could not afford to have the vehicle towed home or to a repair shop, so he decided to drive the damaged vehicle home. He was stopped and arrested for DUI.

10. Respondent knew he should not have driven on October 12, 2020, after drinking alcohol, but chose to drive anyway "to save a life." He was afraid for his friend at the time, but now regrets his actions. Respondent claimed he was "not as drunk as the officer thought [he] was" when he was stopped that night, as he had only had two "shots" of liquor at a graduation party earlier that day. He asserted his blood alcohol content was not 0.15 percent or higher, despite his plea and admission that it was.

11. Respondent asserted that several of his prior convictions were the result of his financial difficulties, rather than a disregard for the law. He noted that when he was convicted for driving while his license was suspended, his license had been suspended because he could not afford to pay fines owed for speeding tickets.

12. Respondent testified that in addition to his 2021 DUI conviction, his criminal history includes three prior DUI convictions that occurred in 2006, 2011, and 2020, and were the result of "bad luck." He asserted that having four DUIs over a 20-year period "looks [worse] on paper" than it really is. Respondent contended all of his

convictions other than his 2021 DUI have been expunged. He stated he does not have a drinking problem and is "not a big drinker." He consumes about one beer every two weeks on average. It was "just unfortunate" he was stopped by the police in October 2020 while driving on the rare occasion he had been drinking. Respondent does not participate in Alcoholics Anonymous or have a sponsor. He stated that when he previously participated in an alcohol abuse prevention program, the teaching was limited to "don't drink and drive and go to one [Mothers Against Drunk Driving] meeting and use Uber."

13. As a condition of his 2011 DUI conviction, respondent previously completed a 12-month DUI prevention program, which involved alternating weekly group meetings and one-on-one counseling. Respondent recently completed the enrollment process for his court-ordered 18-month multiple offender DUI prevention program, as a result of his 2021 DUI. He was scheduled to begin the program the day after the hearing. Respondent also recently installed an ignition interlock device in his vehicle on October 29, 2022. His enrollment in the multiple offender DUI program and installation of the ignition interlock device was delayed due to his financial difficulties.

14. Respondent has not engaged in any counseling or alcohol treatment program other than what was ordered by the court as a result of his convictions. He has not participated in additional counseling or treatment because he has many obligations including taking care of his adult children. Respondent is aware that his criminal history suggests he does not comply with rules established in furtherance of public safety, but he has learned that his actions were wrong and wants to be a better person. He added that he possesses good judgment and makes sound decisions every day related to raising his children. He knows he is a responsible parent and a good person. He has volunteered as a Scout Master through Boy Scouts of America at his

church for approximately 20 years. He also supports pharmacy technician students by periodically providing them free room and board in his home when needed.

RESPONDENT'S SUPPORTIVE DOCUMENTS

15. To support his fitness for licensure, respondent submitted proof that he had an ignition interlock device installed in his vehicle on or about October 29, 2022, and enrolled in his most recent court-ordered DUI prevention program on or about November 1, 2022. These documents were admitted into evidence as administrative hearsay and have been considered to the extent permitted pursuant to Government Code section 11513, subdivision (d).¹

Analysis

16. Government Code section 11504 provides that a "statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing." Thus, the burden is on respondent to establish his fitness for registration as a pharmacy technician.

17. When reviewing whether to deny a license, the Board considers the following criteria: (1) the nature and severity of the act(s) or offense(s) under consideration as grounds for denial; (2) evidence of any act(s) committed subsequent

¹ Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions"

to the act(s) or crime(s) under consideration as grounds for denial; (3) the time that has elapsed since commission of the act(s) or crime(s); (4) whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; and (5) evidence, if any, of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1769.)²

18. The nature and severity of respondent's offenses are serious. In October 2020, he drove while under the influence of alcohol, lost control of the vehicle, and collided with an undetermined object causing significant damage to the vehicle. He is fortunate that no one was seriously injured by his actions. He was convicted for this offense in November 2021 and was placed on four years of criminal probation. In 2017, he was also convicted of driving while his license was suspended as a result of a prior DUI conviction. By respondent's own admission, his criminal history also includes DUI convictions in 2006, 2011, and 2020. He has just begun to fulfill the requirements of his criminal probation designed to prevent him from continuing to drive while under the influence of alcohol.

19. Respondent presented a modicum of rehabilitation. He has recently enrolled in his court-ordered DUI prevention program and installed an ignition interlock device on his vehicle. However, respondent produced little evidence to demonstrate that he is sufficiently rehabilitated to be currently fit for licensure. His

² Business and Professions Code section 477, subdivision (b), states, "'License' includes certificate, registration or other means to engage in a business or profession regulated by this code." Business and Professions Code section 4032 states, "'License' means and includes any license, permit, registration, certificate, or exemption issued by the board and includes the process of applying for and renewing the same."

most recent conviction occurred only one year ago. He has just begun to comply with the terms of his criminal probation and will remain on probation until November 2025. As a result, there has been an insufficient amount of time to evaluate his rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate analysis of one's rehabilitation requires a period of analysis during which he is not on probation or parole].) Respondent must undertake a focused effort to demonstrate to the Board that he can consistently abide by the law and exercise good judgment after he is released from court supervision.

20. Respondent does not participate in Alcoholics Anonymous or similar ongoing alcohol rehabilitation program. Despite having been convicted of multiple DUIs, respondent claimed he has no alcohol abuse issues and attributed his convictions to misfortune. He blamed his misconduct on others and minimized his actions. Respondent's testimony reflects that he has failed to fully accept responsibility for his conduct. His failure to accept responsibility for his acts demonstrates that he has not taken an essential step towards rehabilitation. (See *Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [ones] actions is an essential step towards rehabilitation."].) Respondent claimed all but his most recent conviction have been expunged but produced no independent evidence to support that assertion. He failed to produce evidence of changes he has made to prevent his unlawful acts from reoccurring. Respondent produced no witnesses or letters of support to attest to any insight he has gained into the wrongfulness of his conduct. Although respondent testified in an open and straightforward fashion, his testimony and documentary evidence simply fell short of demonstrating that he is presently fit for licensure.

21. Protecting the public is the Board's highest priority and the paramount concern when exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 4001.1.) It was respondent's burden to demonstrate that he can be relied upon to obey all Board laws and regulations, and act in a manner that is upright, honest, and consistent with professional standards of conduct. When all the evidence is considered, respondent failed to submit sufficient evidence to meet this burden. Consequently, respondent's application must be denied.

LEGAL CONCLUSIONS

1. The burden of proof is on the applicant for a license. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) Rehabilitation is akin to an affirmative defense; therefore, the burden of proof of establishing an affirmative defense of rehabilitation is on the proponent of that defense. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.) The term "burden of proof" means "the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." (Evid. Code, § 115.)

2. Pursuant to Business and Professions Code section 480, subdivision (a)(1), a license application may be denied when the applicant has been "convicted of a crime" that is substantially related to the qualifications, functions or duties of the business or profession for which application was made.³ Pursuant to Business and

³ Business and Professions Code section 477, subdivision (b), states that the term "license" includes "certificate, registration or other means to engage in a business or profession regulated by this code."

Professions Code section 4300, subdivision (c), the Board may refuse to issue a license to an "applicant guilty of unprofessional conduct." Business and Professions Code section 4301, subdivision (h) defines "unprofessional conduct" to include "the administering to oneself ... of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself ... or to the public." Business and Professions Code section 4301, subdivision (l) defines "unprofessional conduct" to include a "conviction of a crime substantially related to the qualifications, functions, and duties of" a Board licensee. 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 his license or registration in a manner consistent with the public health, safety, or welfare."

3. Respondent's DUI convictions are substantially related to the qualifications, functions, and duties of a pharmacy technician in that they evidence 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. As the court in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757 (*Griffiths*), explained:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical

knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

(*Griffiths*, at p. 770.)

4. The court's reasoning in *Griffiths* applies in this case. Respondent's convictions establish cause to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(1), 4300, subdivision (c), and 4301, subdivision (l).

5. Respondent consumed alcohol to an extent or manner dangerous to himself or others when he drove a vehicle while under the influence of alcohol on October 12, 2020. He lost control of the vehicle and collided with an unspecified object causing major damage to his vehicle, while his blood alcohol content measured 0.15 percent. This conduct establishes cause to deny respondent's application pursuant to Business and Professions Code sections 4300, subdivision (c), and 4301, subdivision (h).

6. As set forth in Findings 16 through 21, while respondent's efforts toward rehabilitation thus far should be commended, those efforts have just begun. Respondent did not establish that he has been sufficiently rehabilitated to demonstrate that it would be consistent with the public health, safety, and welfare to

issue him a pharmacy technician registration at this time. Respondent's Pharmacy Technician application should therefore be denied.

ORDER

The application for registration as a Pharmacy Technician submitted by respondent Ger Xiong is DENIED.

DATE: December 2, 2022

Ed Washington

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 KAREN R. DENVIR
Supervising Deputy Attorney General
3 KATELYN E. DOCHERTY
Deputy Attorney General
4 State Bar No. 322028
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6277
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues
13 Against:

14 **GER XIONG**

15 **Pharmacy Technician Registration**
16 **Applicant,**

17 Respondent.

Case No. 7312

STATEMENT OF ISSUES

18
19
20
21 **PARTIES**

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

24 2. On or about September 28, 2021, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for a Pharmacy Technician Registration from Ger Xiong
26 (Respondent). On or about September 28, 2021, Respondent certified under penalty of perjury to
27 the truthfulness of all statements, answers, and representations in the application. The Board
28 denied the application on April 12, 2022.

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
suspend or revoke a license or otherwise take disciplinary action against a person
10 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
11 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.

12 (b)(1) Criteria for determining whether a crime is substantially related to the
13 qualifications, functions, or duties of the business or profession the board regulates
14 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
unprofessional conduct or whose license has been issued by mistake. Unprofessional
25 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

(Criminal Conviction)

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 November 2, 2021, in a
12 criminal proceeding entitled *People v. Ger Xiong* in Sacramento County Superior Court, case

1 number 20MI016783, Respondent was convicted on his plea of guilty of a misdemeanor violation
2 of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of
3 .08% or higher), with an admission to the special allegations for one prior DUI conviction
4 (January 30, 2011) and for having a BAC of 0.15% or higher. The parties stipulated that
5 Respondent's blood alcohol content was .15%. The circumstances are that on or about October
6 12, 2020, a Sacramento Police Department officer observed a vehicle with major damage to the
7 driver's side, and performed an enforcement stop on the vehicle because the officer believed the
8 vehicle had been in a major accident. Upon contact with the driver, later identified as Respondent,
9 the officer observed Respondent had bloodshot eyes and smelled strongly of alcohol. Respondent
10 admitted to having consumed "Hennessey" cognac earlier in the day. The officer further observed
11 two open bottles of Hennessey that were each half-full in Respondent's vehicle, and Respondent
12 failed to successfully complete the field sobriety tests as instructed. As a result of his conviction,
13 Respondent was sentenced to probation for three years, ordered to serve twenty-seven days in jail,
14 to pay certain fines and fees, and to complete a 2nd offender DUI program.

15
16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 (Dangerous Use of Alcoholic Beverages)

18 11. Respondent's application is subject to denial under Code sections 4300, subdivision
19 (c), and 4301, subdivision (h), in that, as set forth in paragraph 10, on or about October 12, 2020,
20 Respondent consumed alcoholic beverages to the extent, or in a manner, as to be dangerous or
21 injurious to himself and the public.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

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. Denying the application of Ger Xiong for a Pharmacy Technician Registration,
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/4/2022

Signature on File

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

SA2022302626
36259463.docx