

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

In the Matter of the Statement of Issues Against:

JANELLE HURTADO, Respondent

Pharmacy Technician Registration Applicant

Agency Case No. 7144

OAH No. 2021090869

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 24, 2022.

It is so ORDERED on January 25, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

Seung W. Oh, Pharm.D.
Board President

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PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 18, 2021, by videoconference from Sacramento, California.

Brent O. Jex, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Office of the Board of Pharmacy (the board), Department of Consumer Affairs.

Janelle Hurtado (respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 18, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 8, 2020, respondent signed and thereafter submitted an application to obtain a pharmacy technician (PT) license in the State of California. The application was received by the board on October 19, 2020. It was denied on February 18, 2021. Respondent timely filed a Request for Hearing.

2. On July 1, 2021, complainant signed and thereafter filed the Statement of Issues in her official capacity. The Statement of Issues alleges two grounds for the denial of respondent's application. First, that on May 10, 2019, respondent was convicted of the substantially related crime of driving under the influence of alcohol (DUI) with a blood alcohol content of .08 percent or greater. Second, that respondent consumed alcohol to the extent or in a manner that was dangerous to herself or to the public.

May 10, 2019 Conviction

3. On May 10, 2019, in the Superior Court of California, County of San Bernardino, Rancho Cucamonga District, Case No. MWV19003657, respondent was convicted upon a plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b) (DUI with a blood alcohol content of .08 percent or more), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on probation for three years and ordered to serve two days in jail with credit for time served of two days. The court also ordered respondent to complete a nine-month Alcohol First Offender Program and pay court fees and fines totaling \$1,948.

4. The circumstances underlying the conviction are that on October 23, 2018, law enforcement officials initiated a traffic stop of respondent's vehicle in Upland, California, and arrested respondent for DUI. It was determined that respondent's blood alcohol level was .21/.20 percent.

Respondent's Testimony

5. Respondent is twenty-eight years old. In March 2019, she became licensed as a PT-in-training in Nevada. She was required to complete 1,500 hours of work as a PT-in-training before being formally licensed as a PT. On October 16, 2020, respondent received her Nevada PT license. She worked as a PT at Walmart stores in Las Vegas and Henderson before joining Anthem Blue Cross in Las Vegas in October 2021.

6. Respondent was twenty-five years old when she was arrested in October 2018 for DUI. She denied any other arrests or convictions in either California or Nevada.

7. Respondent explained the circumstances of her conviction, stating that she had been drinking beer at a friend's home. She could not remember getting into her vehicle but recalled that she was initially pulled over for driving without headlights.

8. Respondent served two days in jail. She asserted that she completed the court-ordered nine-month DUI Program and paid all fines associated with the conviction this year but did not present any supporting documents. Her criminal probation ends in May 2022.

9. Aside from completing the court-ordered nine-month DUI Program, respondent has not sought counseling or treatment for substance abuse and has not

attended Alcoholics Anonymous or other self-help groups. She learned from the nine-month DUI program that it is "dangerous to be driving drunk." Respondent did not provide any other insights into her criminal conduct, other than she no longer drinks, having last consumed alcohol in May 2019.

Analysis

10. The evidence established that on May 10, 2019, respondent was convicted of DUI. Her blood alcohol content was nearly three times the legal limit. The evidence further established that respondent consumed alcohol to an extent or in a manner dangerous to herself and the public.

11. Moreover, her criminal conduct demonstrated a current or potential unfitness of an applicant to carry out the responsibilities of a PT in a manner consistent with the public health, safety, or welfare. Thus, her conviction is substantially related to the qualifications, functions, and duties of a PT.

REHABILITATION

12. "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).) Factors to be considered in determining whether an applicant has made a requisite showing of rehabilitation include the nature of the offense, the length of probation or parole, and the extent to which the terms or probation or parole bear on the individual's rehabilitation. (Cal. Code Regs., tit. 16 § 1769, subd. (b).)

13. The nature and gravity of respondent's crime were serious. At nearly three times the legal limit, respondent made a serious lapse in judgment, disregarding her safety and the safety of other persons and property. Respondent is still on criminal

probation for her conviction. Her probation will expire in May 2022. It is expected that a person will behave in exemplary fashion while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Respondent cannot truly establish rehabilitation until she completes her criminal probation.

14. In addition, fully acknowledging the wrongfulness of her actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent acknowledged the fact of her conviction but provided very little testimony and meaningful insight into her substantial alcohol consumption and the dangers she posed to the public. As a medical professional, she knows how alcohol affects judgment and reflexes. She has access to multiple controlled substances. Her job requires a strict and sober attention to detail to ensure that medications are dispensed in a safe manner. Failure to adhere to that high professional standard can undoubtedly result in the direst of consequences to patients. In this case, respondent ignored her medical training and made a conscious decision to drink and drive.

15. Respondent demonstrated some positive signs of rehabilitation. She testified that she completed the court-ordered nine-month First Offender DUI Program and paid her court fines and fees. She no longer drinks, having last consumed alcohol in May 2019. She has been a licensed PT in Nevada since March 2019, with a consistent work history and no record of professional discipline. However, respondent failed to present any documentary proof of completion of the DUI Program and payment of fines and fees. She failed to offer any insight into the underlying reasons for her heavy drinking and conscious decision to drive while intoxicated. She failed to present any evidence of voluntary participation in self-help or substance abuse treatment. She introduced no letters of support from family members or counselors in

support of her application. In short, respondent failed to prove that she is rehabilitated by a preponderance of the evidence.

LEGAL CONCLUSIONS

Burden of Proof

1. Respondent has the burden of proving that she qualifies for a PT license in California. (*Coffin v. Alcoholic Beverage Control Appeals Board* (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.)

Substantial Relationship

2. Business and Professions Code section 480, subdivision (a)(1) allows the Board to deny an application for a license if within the preceding seven years the applicant has been convicted of a crime "that is substantially related to the qualifications, functions, or duties of the of the business or profession for which the application is made."

3. Pursuant to Business and Professions Code section 493, subdivision (a), "...in a proceeding...to deny an application for a license...upon the ground that the applicant or licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the license 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."

4. For purposes of denying issuance of a personal license, a criminal conviction is substantially related to the qualifications, functions and duties of the license in question if it substantially demonstrates a current or potential unfitness of an applicant to carry out the responsibilities authorized by the license "in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770, subd. (a).) Other criteria for determining whether a conviction is substantially related to the duties of an individual seeking licensure by the Board of Pharmacy include the nature of the offense, the number of years since the offense date, and the nature of the profession. (Bus. & Prof. Code, § 493, subd. (b)(1).)

5. A conviction for driving under the influence of alcohol is substantially related to the qualifications and duties of individuals seeking licensure by the board. (Cal. Code Regs., tit. 16, § 1770, subd. (c)(5).) "Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment..." (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) "Driving 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." (*Ibid.*) While the court in *Griffiths* was analyzing the relationship between a physician's convictions for driving under the influence and his fitness to practice medicine, the reasoning is equally sound here. As set forth in Factual Findings 3, 4, 10, and 11, respondent's DUI conviction is substantially related to the qualifications, functions, and duties of a PT.

Unprofessional Conduct

6. Business and Professions Code section 4300, subdivision (c), provides in pertinent part that the "board may refuse a license to any applicant guilty of unprofessional conduct."

7. Business and Professions Code section 4301, subdivision (h), provides that unprofessional conduct includes:

The administering to oneself...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.

Subdivision (l) provides that unprofessional conduct includes "conviction of a crime substantially related to the qualifications, functions, and duties of a license."

Cause for Denial

8. Cause exists to deny respondent's license application pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (l), and 480, subdivision (a)(1), on the grounds of unprofessional conduct due to respondent's substantially related conviction, as set forth in Factual Findings 3 and 4 and Legal Conclusion 5.

9. Cause exists to deny respondent's license application pursuant to Business and Professions Code sections 4300, subdivision (c), and 4301, subdivision (h), on the grounds of unprofessional conduct, in that respondent consumed alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to herself and the public as set forth in Factual Findings 3 and 4.

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ORDER

Respondent Janelle Hurtado's application for a pharmacy technician license is DENIED.

DATE: December 17, 2021

Danette C. Brown

DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings

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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. 7144
13 **JANELLE HURTADO**
14 **Pharmacy Technician Registration Applicant** **STATEMENT OF ISSUES**
15 Respondent.
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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, Department of Consumer Affairs.

21 2. On or about October 19, 2020, the Board of Pharmacy (Board), Department of
22 Consumer Affairs received an application for a Pharmacy Technician Registration from Janelle
23 Hurtado (Respondent). On or about October 8, 2020, Respondent certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application.

25 The Board denied the application on February 18, 2021.

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

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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
28 executive, 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
2 license 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
4 applicant knowingly made a false statement of fact that is required to be revealed in the
5 application 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
12 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.

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
19 of 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.

25 Unprofessional conduct includes, but is not limited to, any of the following:

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1 (h) The administering to oneself, of any controlled substance, or the use of
2 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
3 dangerous or injurious to oneself, to a person holding a license under this chapter,
4 or to any other person or to the public, or to the extent that the use impairs the
5 ability of the person to conduct with safety to the public the practice authorized by
6 the license.

7 ...

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

27 ...

28 REGULATIONS

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

...
(b) Denial of a license.

(1) When considering the denial of a facility or personal license under Section
480 of the Business and Professions Code on the grounds that the applicant has
been convicted of a crime, the board will consider whether the applicant made a
showing 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:

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

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

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

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

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

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

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

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

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

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

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

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

...

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall 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.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 (May 10, 2019 Criminal Conviction for Driving Under Influence)

3 10. Respondent's application is subject to denial under Code sections 4300, subdivision
4 (c), 4301, subdivision (l), and 480, subdivision (a)(1), in that on or about May 10, 2019, in a
5 criminal proceeding entitled *People v. Janelle Hurtado* in San Bernardino Superior Court, case
6 number MWV19003657, Respondent was convicted on her plea of nolo contendere of violating
7 Penal Code section 23152, subdivision (b) (driving with a blood alcohol content of .08% or
8 higher), a misdemeanor, with a special allegation that Respondent had a blood alcohol content
9 of .15 or higher. The parties stipulated that Respondent's blood alcohol content was .21/.20.
10 The circumstances are that on or about October 23, 2018, Respondent was arrested for suspicion
11 of driving under the influence of alcohol. Respondent was sentenced to probation for three
12 years, serve two days in county jail, pay certain fines and fees, and complete a 9-month DUI
13 program.

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 (Dangerous Use of Alcoholic Beverages)

16 11. Respondent's application is subject to denial under Code sections 4300, subdivision
17 (c), and 4301, subdivision (h), in that, as set forth in paragraph 10, on or about May 10, 2019,
18 Respondent consumed alcoholic beverages to the extent, or in a manner, as to be dangerous or
19 injurious to herself and the public.

20 **PRAYER**

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

- 23 1. Denying the application of Janelle Hurtado for a Pharmacy Technician Registration;

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

DATED: 7/1/2021

Signature on File

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