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

13 In the Matter of the Accusation Against:

Case No. 7353

14 **KHUNNEARY KANG, AKA**
15 **KHUNNEARY UNA**

16 **Pharmacy Technician Registration**
17 **Applicant**

STATEMENT OF ISSUES

Respondent.

18
19 **PARTIES**

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

23 2. On or about February 9, 2022, the Board received an application for a Pharmacy
24 Technician Registration from Khunneary Kang; also known as Khunneary Una (Respondent). On
25 or about January 14, 2022, Respondent certified under penalty of perjury to the truthfulness of all
26 statements, answers, and representations in the application. The Board denied the application on
27 June 14, 2022.

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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. On or about August 9, 2022, Respondent requested a hearing to appeal the denial of
6 the application.

7 **STATUTORY PROVISIONS**

8 5. Section 480 of the Code states, in pertinent part:

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

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

22 6. Section 493 of the Code, effective July 1, 2020, states:

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

(b)

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

(A) The nature and gravity of the offense.

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

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(C) The nature and duties of the profession.

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

(c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.” . . .

7. Section 4300 of the Code states, in pertinent part:

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

...

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. . . .

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

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

...

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

...

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

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1 **REGULATORY PROVISION**

2 9. California Code of Regulations, title 16, section 1770, states:

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

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

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

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

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

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

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

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

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

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

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

29 **FIRST CAUSE FOR DENIAL OF APPLICATION**

30 **(Criminal Conviction)**

31 10. Respondent's application is subject to denial under sections 480, subdivision (a)(1),
32 4300, subdivision (c), and 4301, subdivision (l), of the Code, in conjunction with California Code
33 of Regulations, title 16, section 1770, in that on or about October 30, 2017, in a criminal
34 proceeding entitled *The People of the State of California v. Khunneary Kang*, in Merced County

1 Superior Court, Case Number 17CR-05042, Respondent was convicted by plea of nolo
2 contendere of violating Vehicle Code section 23152(b) (driving with a .08% blood alcohol
3 content), with enhancements under Vehicle Code sections 23578 (driving with a 0.15% blood
4 alcohol content) and 23582 (driving 30 mph or more over the speed limit), a misdemeanor.
5 Respondent was sentenced to 62 days in jail, placed on 36 months' conditional revocable release,
6 required to attend a six-month driving under the influence (DUI) class, and ordered to pay fines.

7 The circumstances are as follows:

8 a. On or about July 8, 2017, at approximately 4:38 a.m., a California Highway
9 Patrol Officer observed a vehicle driving southbound on Highway 99, in Merced County, at a
10 high speed, well above the 65 mph speed limit. While pursuing the vehicle, the officer observed
11 it drift from side to side. The officer's radar detected the vehicle's speed at 94 and 102 mph. The
12 officer conducted a traffic stop, approached the vehicle, and spoke with the driver, who was
13 identified as Respondent. The officer could smell the odor of an alcoholic beverage emanating
14 from Respondent's vehicle. Once Respondent exited the vehicle, the officer could smell the
15 distinct odor of an alcoholic beverage emitting from Respondent's breath. Respondent admitted
16 to consuming one to two "Heineken beers" between 1 and 1:30 a.m. When asked how
17 Respondent would rate herself on a scale of one to ten, with one being completely sober and ten
18 being fall-over drunk, Respondent stated she was "like an eight or nine." The officer observed
19 Respondent's eyes were red and glossy. Respondent failed to adequately perform field sobriety
20 tests. The officer placed Respondent under arrest and transported her to Mercy Medical Center of
21 Merced where she underwent a blood alcohol test, which revealed her blood alcohol level to be
22 0.197%/0.190%.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Dangerous Use of Alcoholic Beverages to an Extent or in a Manner Dangerous or Injurious**
25 **to Oneself, Others, and the Public)**

26 11. Respondent's application is subject to denial under Code sections 4300, subdivision
27 (c), and 4301, subdivision (h), in that on or about July 8, 2017, Respondent used alcoholic
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1 beverages to an extent or in a manner dangerous or injurious to herself, others, and the public, as
2 set forth in paragraph 10 above, and its subparts.

3 **PRAYER**

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

- 6 1. Denying the application of Khunneary Kang; also known as Khunneary Una, for a
7 Pharmacy Technician Registration; and
8 2. Taking such other and further action as deemed necessary and proper.

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10 DATED: 9/6/2022

Signature on File

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

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