

BOARD ORDER #R-11-010
SOAH DOCKET NO. 515-13-2083

RE: IN THE MATTER OF
ANSA ENE HOGAN
(APPLICANT FOR REINSTATEMENT
OF PHARMACIST LICENSE #33036)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

On this day came on to be considered by the Texas State Board of Pharmacy (hereinafter referred to as "Board") the matter of pharmacist license number 33036 previously issued to Ansa Ene Hogan.

After proper and timely notice was given, the matter was heard in public hearing on April 9, 2013, before Joanne Summerhayes, Administrative Law Judge, State Office of Administrative Hearings, who issued a Proposal for Decision, containing Findings of Fact and Conclusions of Law, which was properly served on all parties. All parties were given an opportunity to file exceptions and replies. Board staff filed exceptions on May 23, 2013; Ms. Hogan responded to the Board's exceptions on June 6, 2013. Judge Summerhayes issued a response to the exceptions on July 22, 2013 with changes to Findings of Fact 3, 9, and 13 and Conclusion of Law 10. The Board, after consideration of the Proposal for Decision and argument of the parties, makes and adopts the following Findings of Fact and Conclusions of Law of the Administrative Law Judges contained in the Proposal for Decision. A copy of the Proposal for Decision is attached as Exhibit "A" and incorporated by reference as though fully set forth herein. All proposed Findings of Fact and Conclusions of Law submitted by any party which are not specifically adopted herein are denied.

FINDINGS OF FACT

1. Ansa Ene Hogan (Applicant) was issued pharmacist license no. 33036 on February 28, 1992, by the Texas State Board of Pharmacy (Board).
2. On November 2, 2005, Applicant entered into Agreed Order with the Board revoking her license (Order).

3. On October 9, 2007, in Case No. 4:06-CR00232-002, in the United States District Court for the Southern District of Texas, Applicant pleaded guilty to **two felony offenses: (1) aiding and abetting distribution of a controlled substance;** and **(2) engaging in monetary transactions in property derived from the specified unlawful activity.** The offenses ended in 2002. She was convicted and placed on probation for five years by a judgment imposed on December 3, 2008. She was ordered to pay an assessment of \$200.00 and a fine of \$4,000.00.
4. The Board Order revoking Applicant's license stated that she was barred from applying for reinstatement for one year.
5. On March 15, 2011, six years following the Order, Applicant filed an application for reinstatement. Following an informal conference on October 13, 2011, the Board denied her application.
6. Applicant worked for the United Nations to help poor people in Nigeria with their medical and other needs. She is currently the coordinator of the food pantry in conjunction with her church program to help poor people in her community.
7. Applicant worked at St. Luke's Hospital as pharmacist after she graduated with a Bachelors of Science degree in Pharmacy in 1992. She also worked as a pharmacist at St. John's Hospital and, while working there, obtained her Doctor of Pharmacy degree. She operated her own pharmacy from 1998 until 2007.
8. Applicant completed five years' probation in two and one-half years and paid the fines imposed under the terms of her probation.
9. Applicant has had no criminal history other than the convictions that **were** the basis for the revocation of her license. No other actions have been taken against her by any other state or federal agency.
10. Applicant has followed all provisions of the Order.
11. Applicant has never experienced problems with substance abuse or other disabilities.
12. Applicant has taken thirty hours of continuing education relevant to her pharmacy license in each of the years that her license was revoked.
13. The type of crime for which Applicant was convicted **are** extremely serious, **directly relate to Applicant's practice of pharmacy,** and pose a danger to public health, safety, and welfare generally.
14. Applicant was not required to serve a period of incarceration as a result of her criminal conviction but rather was placed on five years' probation.

15. Applicant's criminal offenses ended approximately eleven years ago; her license was revoked approximately eight years ago; and the judgment imposing probation was entered approximately five years ago.
16. On January 23, 2013, Staff issued Applicant a notice of hearing and complaint, informing Applicant of the date, time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing would be held; the particular sections of the statutes and rules involved; and included a short, plain statement of the matter asserted.
17. The hearing convened April 9, 2013, before Administrative Law Judge Joanne Summerhays at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Tyler Vance, Staff Attorney. Applicant was represented by attorney Trevor Young. The record closed on the same date.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter, pursuant to Texas Occupations Code, Title 3, Subtitle J (Texas Pharmacy Act), including the authority to sanction those who violate the Texas Pharmacy Act or the Board's administrative rules and the authority to reinstate a license after it has been revoked. Tex. Occ. Code §565.102.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Timely and proper notice of the hearing was sent to Applicant. Tex. Gov't Code §§2001.051, 2001.052; 1 Tex. Admin. Code § 155.401; 22 Tex. Admin. Code § 281.30.
4. Applicant has the burden to prove by a preponderance of the evidence that her license should be reinstated. Tex. Occ. Code § 565.101(c); 22 Tex. Admin. Code § 281.66(a)(3).
5. A person whose pharmacy license has been revoked may petition the Board for reinstatement twelve months after the license is revoked. Tex. Occ. Code § 565.101(a); 22 Tex. Admin. Code § 281.66(a).
6. On investigation and review of a petition for reinstatement, the Board may grant or deny the petition or may modify the Board's original finding to reflect a circumstance that has changed sufficiently to warrant the modification. Tex. Occ. Code § 565.102(a); 22 Tex. Admin. Code § 281.66(a)(4).
7. The Board may consider the following items in determining the reinstatement of Applicant's previously revoked or canceled license or registration: (1) moral character in the community; (2) employment history; (3) financial support to her family; (4) participation in continuing education programs or other methods of maintain currency

- with the practice of pharmacy; (5) criminal history; (6) offers of employment in pharmacy; (7) involvement in public service activities in the community; (8) failure to comply with the provisions of the Board order revoking or canceling Applicant's license or registration; (9) action by other state or federal regulatory agencies; (10) any physical, chemical, emotional, or mental impairment; (11) the gravity of the offense for which Applicant's license of registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare; (12) the length of time since Applicant's license or registration was canceled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for Applicant to have rehabilitated herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare; (13) competency to engage in the practice of pharmacy; or (14) other rehabilitation actions taken by Applicant. 22 Tex. Admin. Code § 281.66(b).
8. The Board is authorized to impose suspension or revocation of a license; restrictions on a license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the Board; and probation and supervision by the Board for a period determined by the Board. Tex. Occ. Code § 565.051.
 9. "Probation" means the suspension of a sanction imposed against a license during good behavior by the licensee, for a term and under conditions as determined by the Board. 22 Tex. Admin. Code § 281.61(l).
 10. The Board has the discretion *either to deny Applicant's application or to* reinstate Applicant's license and to modify the Order to impose probation and place any restrictions or conditions it deems necessary.

ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION

Based on Findings of Fact and Conclusions of Law, the Administrative Law Judge (ALJ) recommends that the Board modify the Order and reinstate Applicant's license with a probationary period of two years. In addition, the ALJ recommends that the Board include in its modification of the Order a restriction that prohibits Applicant from owning and operating her own pharmacy, a condition that requires her to inform her employer of her criminal history, and the Board Order.

CONSTRUCTION

It is the intent of the Texas State Board of Pharmacy that any Findings of Fact that are properly construed as Conclusions of Law should be treated as Conclusions of Law and that any Conclusions of Law that are properly construed as Findings of Fact should be treated as Findings of Fact.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Texas State Board of Pharmacy (hereinafter referred to as "BOARD") does hereby ORDER that:

- (1) Effective upon issuance of the license, Agreed Board Order #A-04-018-A, entered on November 2, 2005, shall be set aside and be of no further force and effect, and this Order shall supersede Agreed Board Order #A-04-018-A.
- (2) Applicant's license shall be reinstated after Applicant successfully completes the requirements of subparagraphs (a) through (c) described below. During the period of time in which Applicant completes said requirements, Applicant's license shall be restricted and Applicant shall not practice pharmacy, other than to complete the internship requirements in subparagraph (c). If Applicant has not completed said requirements, Applicant's license shall be revoked, effective two (2) years after the entry of this Order, and Applicant shall not practice pharmacy in this state or be employed in any manner requiring a license with the Board or allowing access to prescription drugs in a pharmacy during the period Applicant's license is revoked.
 - (a) Applicant shall successfully pass the Multistate Jurisprudence Examination pursuant to the Texas Pharmacy Board Rules; and
 - (b) complete forty-five (45) hours of continuing education, in compliance with the continuing education requirements set forth in the Texas Pharmacy Board Rules. To comply with the continuing education requirements under the terms of this Order, Applicant must submit to Board staff certificates or similar documentation which shows evidence of completion of the continuing education hours. Any continuing education credits received as a result of the completion of the continuing education required under the terms of this Order shall be in addition to the hours of continuing education which are required for pharmacist relicensure.
 - (c) Upon completion of the requirements of subparagraphs (a) and (b), Applicant shall complete an internship approved by Board staff, within two (2) years after the entry of this Order, consisting of a minimum of one thousand five hundred (1,500) internship hours under continuous on-site supervision of a Texas licensed

pharmacist who meets the qualifications required of a preceptor defined by the Texas Pharmacy Board Rules. During this internship, Applicant shall:

- (i) notify Board staff in writing of Applicant's initial place of employment and any subsequent change of employment and the reason for such change;
 - (ii) notify Board staff in writing of the name of the supervising pharmacist and any subsequent change of supervising pharmacist and the reason for such change;
 - (iii) provide a written agreement signed by the supervising pharmacist, which states that he/she has reviewed this Order, and is aware of and understands the terms of this Order and that he/she agrees to be the supervising pharmacist for Applicant;
 - (iv) authorize and ensure that Applicant's supervising pharmacist furnishes quarterly reports to Board staff concerning Applicant's conduct and status;
 - (v) not hold Applicant's supervising pharmacist liable in any manner for the contents of any reports made to Board staff; and
 - (vi) not be credited for internship hours in excess of 50 hours per week.
- (3) Applicant's license shall be suspended for a period of two (2) years, with such period to commence upon issuance of the license. Such suspension shall be probated under the conditions that Applicant abide by the terms of this Order, and shall not violate any pharmacy or drug statute or rule of this state, another state, or the United States with respect to pharmacy, controlled substances, and dangerous drugs.
 - (4) Applicant shall pay a probation fee of one thousand two hundred dollars (\$1,200) due ninety (90) days after Applicant's probationary period begins.
 - (5) Applicant shall not hold a direct or indirect ownership interest in any pharmacy during the period of time Applicant's license is restricted, suspended, or under probated suspension under this Order. Upon written request, modification of this restriction may be determined by Board staff.
 - (6) Applicant shall inform any and all employers that Applicant is the subject of this Order.
 - (7) Applicant shall be responsible for all costs relating to compliance with the requirements of this Order.
 - (8) Applicant shall allow Board staff to directly contact Applicant on any matter regarding the enforcement of this Order.

- (9) Failure to comply with any of the requirements in this Order constitutes a violation and shall be grounds for further disciplinary action. The requirements of this Order are subject to the Texas Pharmacy Act, TEX. OCC. CODE ANN., Title 3, Subtitle J (2011), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2013).

Passed and approved at the regular meeting of the Texas State Board of Pharmacy on the 6th day of August, 2013.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 6th day of August, 2013.

MEMBER, TEXAS STATE BOARD OF PHARMACY

ATTEST:

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy

Kerstin E. Arnold
General Counsel
Texas State Board of Pharmacy

EXHIBIT A

SOAH DOCKET NO. 515-13-2083

TEXAS STATE BOARD OF PHARMACY, Petitioner	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
ANSA ENE HOGAN, Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas State Board of Pharmacy (Staff/Board) seeks to deny the application for reinstatement of license by Anse Ene Hogan (Respondent) based on Respondent's conviction in 2008 for the felony offense of aiding and abetting in the distribution of a controlled substance. Respondent urges the Board to consider mitigating factors and reinstate her license, which was revoked by an agreed order in 2005 as a result of her criminal conduct.

Based on the evidentiary record developed at the hearing on the merits, the Administrative Law Judge (ALJ) recommends that Respondent's license be reinstated, with a two-year period of probation and a restriction that prohibits Respondent from owning and operating her own pharmacy and a condition that requires her to inform her employer of her criminal history and the Board Order.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

On April 9, 2013, ALJ Joanne Summerhays convened the hearing in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by attorney Tyler Vance. Respondent was represented by attorney Trevor Young. The record closed on the same day.

No party contested notice or jurisdiction. Those matters are addressed in the findings of fact and conclusions of law.

II. BACKGROUND

Respondent was licensed as a pharmacist from February 28, 1992, until November 2, 2005, when she entered into an agreed order revoking her license (Order). Respondent's license was revoked as a result of an indictment for criminal conduct. On October 9, 2007, in Case No. 4:06-CR00232-002, in the United States District Court for the Southern District of Texas, Respondent pleaded guilty to aiding and abetting distribution of a controlled substance and engaging in monetary transactions in property derived from the specified unlawful activity. According to the judgment, the offenses ended in 2002.¹ She was convicted and placed on probation for five years by a judgment imposed on December 3, 2008.² She was ordered to pay an assessment of \$200.00 and a fine of \$4,000.00.

The Order revoking Respondent's license stated that she was barred from applying for reinstatement for one year. On March 15, 2011, approximately six years following the Order, Respondent filed an application for reinstatement. Following an informal conference, the Board denied her application. Respondent submitted a notice of appeal, and this matter was referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

III. DISCUSSION AND ANALYSIS

A. Board's Authority to Reinstatement Respondent's License

1. Applicable Legal Authority

Board Rule 281.63³ sets out the factors that the Board is to consider in determining the appropriate disciplinary action to take against a licensee with a criminal conviction. The Rule

¹ The judgment entered against Respondent states that the offense of distribution of a controlled substance ended on December 31, 2002, and the offense of engaging in monetary transactions in property derived from the unlawful activity ended on May 22, 2002. Staff Ex. 1. No evidence was presented regarding when the offenses began.

² Staff Ex. 1. The judgment was signed on December 9, 2008, but it indicates that it was imposed on December 3, 2008.

³ 22 Tex. Admin. Code chapter 281 (Board Rules).

gives the Board discretion to “suspend, revoke, or impose other authorized disciplinary action on a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license or registration because of a person’s conviction or deferred adjudication of a crime that serves as a ground for discipline under the Act, and that the [B]oard determines directly relates to the duties and responsibilities of a licensee.” The Board is to determine the person’s fitness to perform the duties and discharge the responsibilities of a licensee or registrant by evaluating and balancing these factors in the following priority with the first being the highest priority:

- (1) the extent and nature of the person’s past criminal activity;
- (2) the amount of time that has elapsed since the person’s last criminal activity;
- (3) the person’s rehabilitation or rehabilitative effort while incarcerated or following release as corroborated by extrinsic evidence;
- (4) the age of the person at the time of the commission of the crime, if younger than 21 years of age at the time of the crime;
- (5) the conduct and work activity of the person prior to and following the criminal activity; and
- (6) other evidence of the person’s present fitness, including letters of recommendation from:
 - (A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff and chief of police in the community where the person resides; and
 - (C) any other persons in contact with the person.⁴

However, Rule 281.63 states that the Board’s discretion regarding sanctions is limited by Board Rule 281.64, which requires the Board to impose specific sanctions for particular types of criminal conduct. Rule 281.64 states that the Board:

has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in § 281.63(g) of this title (relating to Considerations for Criminal Offenses) and necessitate the disciplinary action listed in paragraphs (1) - (3) of this subsection. In regard to the crimes enumerated in this rule, the

⁴ Board Rule 281.63(g).

[B]oard has weighed the factors, which are required to be considered from § 281.63(g), in a light most favorable to the individual, and even if these factors were present, the [B]oard has concluded that the following sanctions apply to individuals with the criminal offenses as described in paragraphs (1) - (3) of this subsection... .

Among the types of crimes enumerated in Rule 281.64 are drug-related felony offenses involving illegal dispensing of controlled substances which occurred within the last ten years. It was undisputed that Respondent's conviction was of this type. Therefore, under Rule 281.64, the Board had no discretion to weigh any factors in determining the appropriate sanction and was required to impose the disciplinary sanction of revocation of Respondent's license.

Board Rule 281.66 states that a person whose pharmacy license has been canceled, revoked, or restricted, whether by agreement or by action of the Board, may, after twelve months from the effective date of such cancellation, revocation, or restriction, apply to the Board for reinstatement or removal of the restriction. The Board may consider the following factors in determining the reinstatement of an applicant's previously revoked or canceled license or registration:

- (1) moral character in the community;
- (2) employment history;
- (3) financial support to his/her family;
- (4) participation in continuing education programs or other methods of maintaining currency with the practice of pharmacy;
- (5) criminal history record, including arrests, indictments, and convictions relating to felonies or misdemeanors involving moral turpitude;
- (6) offers of employment in pharmacy;
- (7) involvement in public service activities in the community;
- (8) failure to comply with the provisions of the Board order revoking or canceling the applicant's license or registration;
- (9) action by other state or federal regulatory agencies;
- (10) any physical, chemical, emotional, or mental impairment;

(11) the gravity of the offense for which the applicant's license or registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare;

(12) the length of time since the applicant's license or registration was canceled, revoked or restricted, as a factor in determining whether the time period has been sufficient for the applicant to have rehabilitated himself/herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare;

(13) competency to engage in the practice of pharmacy; and

(14) other rehabilitation actions taken by the applicant.

The burden of proof is upon the applicant for reinstatement.⁵

2. Arguments and Analysis

Staff contends that the Board is required by the same rules requiring the Board to revoke Respondent's license to deny Respondent's application for reinstatement. While Respondent does not contest that the Board was required to revoke her license as a result of her criminal conduct, she contends that Rule 281.64 does not control the Board's discretion to approve or deny her application for reinstatement of her license. Board Rules 281.64 and 281.63 refer only to disciplinary actions against a licensee or applicant for a license and neither specifically mentions applicants for reinstatement.

Arguably a licensee whose license was revoked and applies for reinstatement might be considered an applicant for a license; however, the Board has expressly distinguished applications for reinstatement from applications for licensure by adopting a separate rule (Rule 281.66) applicable only to licensees whose licenses have been revoked and are applying for reinstatement. While Rule 281.63 references Rule 281.64 and vice versa, neither rule references Rule 281.66 or expressly states that reinstatement is subject to the limitations on the Board's authority set out in Rule 281.64. Likewise, Rule 281.66 does not reference either Rule 281.64 or Rule 281.63. This leads the ALJ to conclude that the Board has determined that different factors are applicable to reinstatement than to imposition of the sanction of revocation

⁵ Board Rule 281.66(a)(3).

or denial of licensure. This conclusion is reinforced by the Order, which expressly states that Respondent is entitled to apply for reinstatement after one year.⁶ Therefore, the ALJ concludes that Board Rule 281.66 gives the Board discretion to consider whether to reinstate Respondent's license.⁷

B. Factors Relevant to Application for Reinstatement

1. Applicable Legal Authority

As stated above, Rule 281.66 contains fourteen factors that the Board may consider in making the decision whether to reinstate a license. After considering these factors, the Board may, in its discretion, grant or deny the application, or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.⁸ As stated in the Board's Rules, the ultimate purposes of disciplinary sanctions are to protect and inform the public, deter future violations, offer opportunities for rehabilitation, punish violators, and deter others from violations.⁹ Among the sanctions the Board is authorized to impose are suspension or revocation; restrictions on a license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the Board; and probation and supervision by the Board for a period determined by the Board with a requirement that the license holder:

- (A) report regularly to the Board on matters that are the basis of the probation;
- (B) limit practice to the areas prescribed by the Board;

⁶ Staff's contention, that Rule 281.64 requires that the license be revoked for ten years, is not supported by the plain language of the rule. The rule states that revocation is required if the conviction is less than ten years old; it does not state that the license cannot be reinstated for ten years.

⁷ Because the ALJ concludes that the Board Rules give the Board discretion to consider Respondent's application for reinstatement, it is not necessary for the ALJ to consider and rule as to whether the Order binds the Board to consider the application.

⁸ Board Rule 281.66(a)(4).

⁹ Board Rule 281.60(c).

(C) continue or review professional education until the license holder attains a degree of skill satisfactory to the Board in each area that is the basis of the probation; or

(D) pay the Board a probation fee to defray the costs of monitoring the license.¹⁰

“Probation” means the suspension of a sanction imposed against a license during good behavior, for a term and under conditions as determined by the Board.¹¹

2. Evidence and Analysis

The ALJ will analyze the evidence, if any, relevant to the fourteen factors which the Board may, in its discretion, consider.

a. Moral Character in the Community; Involvement in Public Service Activities in the Community

Respondent stated that it is her passion to help people who need it. In the past, she worked for three years for the United Nations helping impoverished people in Nigeria with their medical and other needs. She has served the poor community in the United States since 2006 by volunteering for the food pantry through her church.

b. Employment History

Respondent has a Bachelor of Science degree in Pharmacy from Texas Southern University. She also has a Doctor of Pharmacy degree. She was employed as a pharmacist at St. Lukes Hospital from the time she graduated in 1992 until 1998, and at St. Joseph Hospital after that. She owned her own pharmacy business from 1998 until 2005. Currently she is working as the Coordinator of the food pantry.

¹⁰ Tex. Occ. Code § 565.051.

¹¹ Board Rule 281.61(1).

c. Financial Support

Respondent has three children, who are sixteen, twenty-nine, and thirty years old. Her older children have had to take out loans for their education because she has been unable to provide support for them. The youngest is still living at home and will need college tuition in the near future. Her husband is sixty-five years old and is retired.

d. Criminal History; Other Actions

Respondent has had no criminal history other than the conviction which was the basis for the revocation of her license. No other actions have been taken against her by any other state or federal agency.

e. Compliance with Agreed Order; Offers for Employment

Respondent has not pursued any employment in the area of pharmacy since she entered into the Order, which prohibits her from being employed as a pharmacist. Respondent has followed all provisions of the Order.

f. Any Physical, Chemical, Emotional, or Mental Impairment

Respondent does not take any medications and has never had any problems with substance abuse or disabilities.

g. Competency

Respondent testified that she worked hard to complete her training as a pharmacist. She has never had any complaints regarding her competence as a practicing pharmacist

h. Continuing Education

Respondent has taken thirty hours of continuing education relevant to pharmacy in each of the years that her license was revoked.

i. Gravity of the Offense and the Impact upon Public Health, Safety and Welfare

The evidence showed that Respondent pleaded guilty and was convicted of aiding and abetting the distribution of a controlled substance. The exact circumstances surrounding her crime were not in evidence. She was not incarcerated, but was placed on five years' probation and ordered to pay \$4,200.00, according to the judgment against her. The Board, in its rules, has indicated that the type of crime for which Respondent was convicted is extremely serious and poses a danger to public health, safety and welfare, but no evidence was submitted as to the specific impact that Respondent's actions had on public health, safety, or welfare.

j. Length of Time Since Revocation

Board Rule 281.66 states that the length of time since the disciplinary action was taken against Respondent's license should be considered as a factor in determining whether the time period has been sufficient for Respondent to have rehabilitated herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare. Respondent's license was revoked in 2005, eight years ago. Respondent testified that she has complied with the Order since the revocation. As further evidence of her rehabilitative efforts during that time, Respondent stated that she completed her five-year criminal probation (imposed in 2008) in only two and one-half years, and has already paid the fines assessed against her.

Respondent submitted evidence of good conduct and rehabilitative effort over the last eight years since her license was revoked. The evidence submitted by Respondent was sufficient to support a finding that the Order entered against her should be modified to reinstate her license with a period of probation under conditions that would provide the Board with reassurance that her good conduct and efforts at rehabilitation will continue and can be verified. Based on the

evidence submitted, the ALJ would recommend probation with a restriction that would prohibit Respondent from owning and operating her own pharmacy and a condition that would require her to inform her employer of her criminal history and the Board Order.

IV. FINDINGS OF FACT

1. Ansa Ene Hogan (Respondent) was issued pharmacist license no. 33036 on February 28, 1992, by the Texas State Board of Pharmacy (Board).
2. On November 2, 2005, Respondent entered into Agreed Order with the Board revoking her license (Order).
3. On October 9, 2007, in Case No. 4:06-CR00232-002, in the United States District Court for the Southern District of Texas, Respondent pleaded guilty to aiding and abetting distribution of a controlled substance and engaging in monetary transactions in property derived from the specified unlawful activity. The offenses ended in 2002. She was convicted and placed on probation for five years by a judgment imposed on December 3, 2008. She was ordered to pay an assessment of \$200.00 and a fine of \$4000.00.
4. The Board Order revoking Respondent's license stated that she was barred from applying for reinstatement for one year.
5. On March 15, 2011, six years following the Order, Respondent filed an application for reinstatement. Following an informal conference on October 13, 2011, the Board denied her application.
6. Respondent worked for the United Nations to help poor people in Nigeria with their medical and other needs. She is currently the coordinator of the food pantry in conjunction with her church program to help poor people in her community.
7. Respondent worked at St. Luke's Hospital as pharmacist after she graduated with a Bachelors of Science degree in Pharmacy in 1992. She also worked as a pharmacist at St. John's Hospital and, while working there, obtained her Doctor of Pharmacy degree. She operated her own pharmacy from 1998 until 2007.
8. Respondent completed five years' probation in two and one-half years and paid the fines imposed under the terms of her probation.
9. Respondent has had no criminal history other than the conviction that was the basis for the revocation of her license. No other actions have been taken against her by any other state or federal agency.
10. Respondent has followed all provisions of the Order.

11. Respondent has never experienced problems with substance abuse or other disabilities.
12. Respondent has taken thirty hours of continuing education relevant to her pharmacy license in each of the years that her license was revoked.
13. The type of crime for which Respondent was convicted is extremely serious and poses a danger to public health, safety, and welfare generally.
14. Respondent was not required to serve a period of incarceration as a result of her criminal conviction but rather was placed on five years' probation.
15. Respondent's criminal offenses ended approximately eleven years ago; her license was revoked approximately eight years ago; and the judgment imposing probation was entered approximately five years ago.
16. On January 23, 2013, Staff issued Respondent a notice of hearing and complaint, informing Respondent of the date, time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing would be held; the particular sections of the statutes and rules involved; and included a short, plain statement of the matter asserted.
17. The hearing convened April 9, 2013, before Administrative Law Judge Joanne Summerhays at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Tyler Vance, Staff Attorney. Respondent was represented by attorney Trevor Young. The record closed on the same date.

V. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter, pursuant to Texas Occupations Code, title 3, subtitle J (Texas Pharmacy Act), including the authority to sanction those who violate the Texas Pharmacy Act or the Board's administrative rules and the authority to reinstate a license after it has been revoked. Tex. Occ. Code § 565.102.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Timely and proper notice of the hearing was sent to Respondent. Tex. Gov't Code §§ 2001.051, .052; 1 Tex. Admin. Code § 155.401; 22 Tex. Admin. Code § 281.30.
4. Respondent has the burden to prove by a preponderance of the evidence that her license should be reinstated. Tex. Occ. Code § 565.101(c); 22 Tex. Admin. Code § 281.66(a)(3).

5. A person whose pharmacy license has been revoked may petition the Board for reinstatement twelve months after the license is revoked. Tex. Occ. Code § 565.01(a); 22 Tex. Admin. Code § 281.66(a).
6. On investigation and review of a petition for reinstatement, the Board may grant or deny the petition or may modify the Board's original finding to reflect a circumstance that has changed sufficiently to warrant the modification. Tex. Occ. Code § 565.102(a); 22 Tex. Admin. Code § 281.66(a)(4).
7. The Board may consider the following items in determining the reinstatement of Applicant's previously revoked or canceled license or registration: (1) moral character in the community; (2) employment history; (3) financial support to her family; (4) participation in continuing education programs or other methods of maintaining currency with the practice of pharmacy; (5) criminal history; (6) offers of employment in pharmacy; (7) involvement in public service activities in the community; (8) failure to comply with the provisions of the Board order revoking or canceling Applicant's license or registration; (9) action by other state or federal regulatory agencies; (10) any physical, chemical, emotional, or mental impairment; (11) the gravity of the offense for which Applicant's license or registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare; (12) the length of time since Applicant's license or registration was canceled, revoked or restricted, as a factor in determining whether the time period has been sufficient for Applicant to have rehabilitated herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare; (13) competency to engage in the practice of pharmacy; or (14) other rehabilitation actions taken by Applicant. 22 Tex. Admin. Code § 281.66(b).
8. The Board is authorized to impose suspension or revocation of a license; restrictions on a license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the Board; and probation and supervision by the Board for a period determined by the Board. Tex. Occ. Code § 565.051.
9. "Probation" means the suspension of a sanction imposed against a license during good behavior by the licensee, for a term and under conditions as determined by the Board. 22 Tex. Admin. Code § 281.61(1).
10. The Board has the discretion to reinstate Respondent's license and to modify the Order to impose probation and place any restrictions or conditions it deems necessary.

VI. RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law, the ALJ recommends that the Board modify the Order and reinstate Respondent's license with a probationary period of two years. In addition, the ALJ recommends that the Board include in its modification of the Order a restriction that prohibits Respondent from owning and operating her own pharmacy and a condition that requires her to inform her employer of her criminal history and the Board Order.

SIGNED May 8, 2013.

A handwritten signature in black ink, appearing to read 'Joanne Summerhays', is written over a horizontal line. The signature is fluid and cursive.

**JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

BOARD ORDER #R-11-010
SOAH DOCKET NO. 515-13-2083

RE: IN THE MATTER OF
ANSA ENE HOGAN
(APPLICANT FOR REINSTATEMENT
OF PHARMACIST LICENSE #33036)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

On this day came on to be considered by the Texas State Board of Pharmacy (hereinafter referred to as "Board") the matter of pharmacist license number 33036 previously issued to Ansa Ene Hogan.

After proper and timely notice was given, the matter was heard in public hearing on April 9, 2013, before Joanne Summerhayes, Administrative Law Judge, State Office of Administrative Hearings, who issued a Proposal for Decision, containing Findings of Fact and Conclusions of Law, which was properly served on all parties. All parties were given an opportunity to file exceptions and replies. Board staff filed exceptions on May 23, 2013; Ms. Hogan responded to the Board's exceptions on June 6, 2013. Judge Summerhayes issued a response to the exceptions on July 22, 2013 with changes to Findings of Fact 3, 9, and 13 and Conclusion of Law 10. The Board, after consideration of the Proposal for Decision and argument of the parties, makes and adopts the following Findings of Fact and Conclusions of Law of the Administrative Law Judges contained in the Proposal for Decision. A copy of the Proposal for Decision is attached as Exhibit "A" and incorporated by reference as though fully set forth herein. All proposed Findings of Fact and Conclusions of Law submitted by any party which are not specifically adopted herein are denied.

FINDINGS OF FACT

1. Ansa Ene Hogan (Applicant) was issued pharmacist license no. 33036 on February 28, 1992, by the Texas State Board of Pharmacy (Board).

2. On November 2, 2005, Applicant entered into Agreed Order with the Board revoking her license (Order).
3. On October 9, 2007, in Case No. 4:06-CR00232-002, in the United States District Court for the Southern District of Texas, Applicant pleaded guilty to **two felony offenses: (1) aiding and abetting distribution of a controlled substance;** and **(2) engaging in monetary transactions in property derived from the specified unlawful activity.** The offenses ended in 2002. She was convicted and placed on probation for five years by a judgment imposed on December 3, 2008. She was ordered to pay an assessment of \$200.00 and a fine of \$4,000.00.
4. The Board Order revoking Applicant's license stated that she was barred from applying for reinstatement for one year.
5. On March 15, 2011, six years following the Order, Applicant filed an application for reinstatement. Following an informal conference on October 13, 2011, the Board denied her application.
6. Applicant worked for the United Nations to help poor people in Nigeria with their medical and other needs. She is currently the coordinator of the food pantry in conjunction with her church program to help poor people in her community.
7. Applicant worked at St. Luke's Hospital as pharmacist after she graduated with a Bachelors of Science degree in Pharmacy in 1992. She also worked as a pharmacist at St. John's Hospital and, while working there, obtained her Doctor of Pharmacy degree. She operated her own pharmacy from 1998 until 2007.
8. Applicant completed five years' probation in two and one-half years and paid the fines imposed under the terms of her probation.
9. Applicant has had no criminal history other than the convictions that **were** the basis for the revocation of her license. No other actions have been taken against her by any other state or federal agency.
10. Applicant has followed all provisions of the Order.
11. Applicant has never experienced problems with substance abuse or other disabilities.
12. Applicant has taken thirty hours of continuing education relevant to her pharmacy license in each of the years that her license was revoked.
13. The type of crime for which Applicant was convicted **are** extremely serious, **directly relate to Applicant's practice of pharmacy**, and pose a danger to public health, safety, and welfare generally.

14. Applicant was not required to serve a period of incarceration as a result of her criminal conviction but rather was placed on five years' probation.
15. Applicant's criminal offenses ended approximately eleven years ago; her license was revoked approximately eight years ago; and the judgment imposing probation was entered approximately five years ago.
16. On January 23, 2013, Staff issued Applicant a notice of hearing and complaint, informing Applicant of the date, time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing would be held; the particular sections of the statutes and rules involved; and included a short, plain statement of the matter asserted.
17. The hearing convened April 9, 2013, before Administrative Law Judge Joanne Summerhays at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Tyler Vance, Staff Attorney. Applicant was represented by attorney Trevor Young. The record closed on the same date.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter, pursuant to Texas Occupations Code, Title 3, Subtitle J (Texas Pharmacy Act), including the authority to sanction those who violate the Texas Pharmacy Act or the Board's administrative rules and the authority to reinstate a license after it has been revoked . Tex. Occ. Code §565.102.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Timely and proper notice of the hearing was sent to Applicant. Tex. Gov't Code §§2001.051, 2001.052; 1 Tex. Admin. Code § 155.401; 22 Tex. Admin. Code § 281.30.
4. Applicant has the burden to prove by a preponderance of the evidence that her license should be reinstated. Tex. Occ. Code § 565.101(c); 22 Tex. Admin. Code § 281.66(a)(3).
5. A person whose pharmacy license has been revoked may petition the Board for reinstatement twelve months after the license is revoked. Tex. Occ. Code § 565.101(a); 22 Tex. Admin. Code § 281.66(a).
6. On investigation and review of a petition for reinstatement, the Board may grant or deny the petition or may modify the Board's original finding to reflect a circumstance that has changed sufficiently to warrant the modification. Tex. Occ. Code § 565.102(a); 22 Tex. Admin. Code § 281.66(a)(4).

7. The Board may consider the following items in determining the reinstatement of Applicant's previously revoked or canceled license or registration: (1) moral character in the community; (2) employment history; (3) financial support to her family; (4) participation in continuing education programs or other methods of maintain currency with the practice of pharmacy; (5) criminal history; (6) offers of employment in pharmacy; (7) involvement in public service activities in the community; (8) failure to comply with the provisions of the Board order revoking or canceling Applicant's license or registration; (9) action by other state or federal regulatory agencies; (10) any physical, chemical, emotional, or mental impairment; (11) the gravity of the offense for which Applicant's license of registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare; (12) the length of time since Applicant's license or registration was canceled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for Applicant to have rehabilitated herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare; (13) competency to engage in the practice of pharmacy; or (14) other rehabilitation actions taken by Applicant. 22 Tex. Admin. Code § 281.66(b).
8. The Board is authorized to impose suspension or revocation of a license; restrictions on a license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the Board; and probation and supervision by the Board for a period determined by the Board. Tex. Occ. Code § 565.051.
9. "Probation" means the suspension of a sanction imposed against a license during good behavior by the licensee, for a term and under conditions as determined by the Board. 22 Tex. Admin. Code § 281.61(l).
10. The Board has the discretion *either to deny Applicant's application or to* reinstate Applicant's license and to modify the Order to impose probation and place any restrictions or conditions it deems necessary.

ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION

Based on Findings of Fact and Conclusions of Law, the Administrative Law Judge (ALJ) recommends that the Board modify the Order and reinstate Applicant's license with a probationary period of two years. In addition, the ALJ recommends that the Board include in its modification of the Order a restriction that prohibits Applicant from owning and operating her own pharmacy a condition that requires her to inform her employer of her criminal history and the Board Order.

The Board is changing the ALJ's recommended sanction for three reasons. First, unlike the ALJ, the Board is authorized to determine the penalty for a violation of the Texas Pharmacy Act (Act) and to grant or deny license applicants. Second, the ALJ did not properly weigh the factors to be considered under Texas Pharmacy Rule (Rule) 281.66. Third, a consistent precedent must be enforced.

Pursuant to Sections 551.002, 554.001, 554.002, 565.001, and 565.051 of the Act and Rule 281.60, the Board has the responsibility to assess sanctions against licensees who are found to have violated the Act and to issue or deny licenses to applicants. No such authority has been granted to the ALJ.

In determining that Applicant's license should be reinstated based on the factors listed in Rule 281.66, the ALJ did not properly weigh the evidence that was presented. The ALJ recommends reinstatement of Applicant's license despite finding that Applicant was convicted of crimes within the past 10 years that are extremely serious, directly related to the practice of pharmacy, and which pose a danger to public health, safety, and welfare generally. These criminal convictions occurred after the date of the revocation of Applicant's license. As staff argued at the hearing, the Board considers felony distribution of a controlled substance one of the most serious crimes a pharmacist can commit. This is reflected in Rule 281.64 which allows the Board to deny an applicant or revoke a license for 10 years from the date of this type of drug-related felony. Because one of Applicant's offenses was a felony involving distribution of a controlled substance, and involved Applicant's actions that occurred while she was practicing pharmacy in a pharmacy she owned, it is of a very serious nature and of great concern to the Board. A pharmacist's upmost responsibility is to ensure that a controlled substances are dispensed pursuant to legitimate prescriptions. While the ALJ found that Applicant fulfilled several mitigating factors under Rule 281.66, those factors do not outweigh Applicant's extremely serious and recent criminal history. The Board agrees with the ALJ's Conclusion of Law No. 10 that denial of Applicant's application for reinstatement is an appropriate sanction.

The Board also disagrees with the ALJ's recommendation because it must maintain a consistent precedent. Section 281.64(c)(2)(A)(i)(III) of the Rules memorializes a precedent that has been established by the Board regarding felonies involving the distribution of a controlled substance. A consistent precedent must be enforced. It would be unfair for one applicant to receive a different outcome than other applicants.

CONSTRUCTION

It is the intent of the Texas State Board of Pharmacy that any Findings of Fact that are properly construed as Conclusions of Law should be treated as Conclusions of Law and that any Conclusions of Law that are properly construed as Findings of Fact should be treated as Findings of Fact.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Texas State Board of Pharmacy (hereinafter referred to as "BOARD") does hereby ORDER that Ansa Ene Hogan's application for reinstatement of pharmacist license number 33036 be DENIED.

Board Order #R-11-010

Ansa Ene Hogan

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Passed and approved at the regular meeting of the Texas State Board of Pharmacy
on the 6th day of August, 2013.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 6th day of August, 2013.

MEMBER, TEXAS STATE BOARD OF PHARMACY

ATTEST:

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy

Kerstin E. Arnold
General Counsel
Texas State Board of Pharmacy

EXHIBIT A

SOAH DOCKET NO. 515-13-2083

TEXAS STATE BOARD OF PHARMACY, Petitioner	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	OF
	§	
ANSA ENE HOGAN, Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas State Board of Pharmacy (Staff/Board) seeks to deny the application for reinstatement of license by Anse Ene Hogan (Respondent) based on Respondent's conviction in 2008 for the felony offense of aiding and abetting in the distribution of a controlled substance. Respondent urges the Board to consider mitigating factors and reinstate her license, which was revoked by an agreed order in 2005 as a result of her criminal conduct.

Based on the evidentiary record developed at the hearing on the merits, the Administrative Law Judge (ALJ) recommends that Respondent's license be reinstated, with a two-year period of probation and a restriction that prohibits Respondent from owning and operating her own pharmacy and a condition that requires her to inform her employer of her criminal history and the Board Order.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

On April 9, 2013, ALJ Joanne Summerhays convened the hearing in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by attorney Tyler Vance. Respondent was represented by attorney Trevor Young. The record closed on the same day.

No party contested notice or jurisdiction. Those matters are addressed in the findings of fact and conclusions of law.

II. BACKGROUND

Respondent was licensed as a pharmacist from February 28, 1992, until November 2, 2005, when she entered into an agreed order revoking her license (Order). Respondent's license was revoked as a result of an indictment for criminal conduct. On October 9, 2007, in Case No. 4:06-CR00232-002, in the United States District Court for the Southern District of Texas, Respondent pleaded guilty to aiding and abetting distribution of a controlled substance and engaging in monetary transactions in property derived from the specified unlawful activity. According to the judgment, the offenses ended in 2002.¹ She was convicted and placed on probation for five years by a judgment imposed on December 3, 2008.² She was ordered to pay an assessment of \$200.00 and a fine of \$4,000.00.

The Order revoking Respondent's license stated that she was barred from applying for reinstatement for one year. On March 15, 2011, approximately six years following the Order, Respondent filed an application for reinstatement. Following an informal conference, the Board denied her application. Respondent submitted a notice of appeal, and this matter was referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

III. DISCUSSION AND ANALYSIS

A. Board's Authority to Reinstatement Respondent's License

1. Applicable Legal Authority

Board Rule 281.63³ sets out the factors that the Board is to consider in determining the appropriate disciplinary action to take against a licensee with a criminal conviction. The Rule

¹ The judgment entered against Respondent states that the offense of distribution of a controlled substance ended on December 31, 2002, and the offense of engaging in monetary transactions in property derived from the unlawful activity ended on May 22, 2002. Staff Ex. 1. No evidence was presented regarding when the offenses began.

² Staff Ex. 1. The judgment was signed on December 9, 2008, but it indicates that it was imposed on December 3, 2008.

³ 22 Tex. Admin. Code chapter 281 (Board Rules).

gives the Board discretion to “suspend, revoke, or impose other authorized disciplinary action on a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license or registration because of a person’s conviction or deferred adjudication of a crime that serves as a ground for discipline under the Act, and that the [B]oard determines directly relates to the duties and responsibilities of a licensee.” The Board is to determine the person’s fitness to perform the duties and discharge the responsibilities of a licensee or registrant by evaluating and balancing these factors in the following priority with the first being the highest priority:

- (1) the extent and nature of the person’s past criminal activity;
- (2) the amount of time that has elapsed since the person’s last criminal activity;
- (3) the person’s rehabilitation or rehabilitative effort while incarcerated or following release as corroborated by extrinsic evidence;
- (4) the age of the person at the time of the commission of the crime, if younger than 21 years of age at the time of the crime;
- (5) the conduct and work activity of the person prior to and following the criminal activity; and
- (6) other evidence of the person’s present fitness, including letters of recommendation from:
 - (A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff and chief of police in the community where the person resides; and
 - (C) any other persons in contact with the person.⁴

However, Rule 281.63 states that the Board’s discretion regarding sanctions is limited by Board Rule 281.64, which requires the Board to impose specific sanctions for particular types of criminal conduct. Rule 281.64 states that the Board:

has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in § 281.63(g) of this title (relating to Considerations for Criminal Offenses) and necessitate the disciplinary action listed in paragraphs (1) - (3) of this subsection. In regard to the crimes enumerated in this rule, the

⁴ Board Rule 281.63(g).

[B]oard has weighed the factors, which are required to be considered from § 281.63(g), in a light most favorable to the individual, and even if these factors were present, the [B]oard has concluded that the following sanctions apply to individuals with the criminal offenses as described in paragraphs (1) - (3) of this subsection... .

Among the types of crimes enumerated in Rule 281.64 are drug-related felony offenses involving illegal dispensing of controlled substances which occurred within the last ten years. It was undisputed that Respondent's conviction was of this type. Therefore, under Rule 281.64, the Board had no discretion to weigh any factors in determining the appropriate sanction and was required to impose the disciplinary sanction of revocation of Respondent's license.

Board Rule 281.66 states that a person whose pharmacy license has been canceled, revoked, or restricted, whether by agreement or by action of the Board, may, after twelve months from the effective date of such cancellation, revocation, or restriction, apply to the Board for reinstatement or removal of the restriction. The Board may consider the following factors in determining the reinstatement of an applicant's previously revoked or canceled license or registration:

- (1) moral character in the community;
- (2) employment history;
- (3) financial support to his/her family;
- (4) participation in continuing education programs or other methods of maintaining currency with the practice of pharmacy;
- (5) criminal history record, including arrests, indictments, and convictions relating to felonies or misdemeanors involving moral turpitude;
- (6) offers of employment in pharmacy;
- (7) involvement in public service activities in the community;
- (8) failure to comply with the provisions of the Board order revoking or canceling the applicant's license or registration;
- (9) action by other state or federal regulatory agencies;
- (10) any physical, chemical, emotional, or mental impairment;

(11) the gravity of the offense for which the applicant's license or registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare;

(12) the length of time since the applicant's license or registration was canceled, revoked or restricted, as a factor in determining whether the time period has been sufficient for the applicant to have rehabilitated himself/herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare;

(13) competency to engage in the practice of pharmacy; and

(14) other rehabilitation actions taken by the applicant.

The burden of proof is upon the applicant for reinstatement.⁵

2. Arguments and Analysis

Staff contends that the Board is required by the same rules requiring the Board to revoke Respondent's license to deny Respondent's application for reinstatement. While Respondent does not contest that the Board was required to revoke her license as a result of her criminal conduct, she contends that Rule 281.64 does not control the Board's discretion to approve or deny her application for reinstatement of her license. Board Rules 281.64 and 281.63 refer only to disciplinary actions against a licensee or applicant for a license and neither specifically mentions applicants for reinstatement.

Arguably a licensee whose license was revoked and applies for reinstatement might be considered an applicant for a license; however, the Board has expressly distinguished applications for reinstatement from applications for licensure by adopting a separate rule (Rule 281.66) applicable only to licensees whose licenses have been revoked and are applying for reinstatement. While Rule 281.63 references Rule 281.64 and vice versa, neither rule references Rule 281.66 or expressly states that reinstatement is subject to the limitations on the Board's authority set out in Rule 281.64. Likewise, Rule 281.66 does not reference either Rule 281.64 or Rule 281.63. This leads the ALJ to conclude that the Board has determined that different factors are applicable to reinstatement than to imposition of the sanction of revocation

⁵ Board Rule 281.66(a)(3).

or denial of licensure. This conclusion is reinforced by the Order, which expressly states that Respondent is entitled to apply for reinstatement after one year.⁶ Therefore, the ALJ concludes that Board Rule 281.66 gives the Board discretion to consider whether to reinstate Respondent's license.⁷

B. Factors Relevant to Application for Reinstatement

1. Applicable Legal Authority

As stated above, Rule 281.66 contains fourteen factors that the Board may consider in making the decision whether to reinstate a license. After considering these factors, the Board may, in its discretion, grant or deny the application, or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.⁸ As stated in the Board's Rules, the ultimate purposes of disciplinary sanctions are to protect and inform the public, deter future violations, offer opportunities for rehabilitation, punish violators, and deter others from violations.⁹ Among the sanctions the Board is authorized to impose are suspension or revocation; restrictions on a license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the Board; and probation and supervision by the Board for a period determined by the Board with a requirement that the license holder:

- (A) report regularly to the Board on matters that are the basis of the probation;
- (B) limit practice to the areas prescribed by the Board;

⁶ Staff's contention, that Rule 281.64 requires that the license be revoked for ten years, is not supported by the plain language of the rule. The rule states that revocation is required if the conviction is less than ten years old; it does not state that the license cannot be reinstated for ten years.

⁷ Because the ALJ concludes that the Board Rules give the Board discretion to consider Respondent's application for reinstatement, it is not necessary for the ALJ to consider and rule as to whether the Order binds the Board to consider the application.

⁸ Board Rule 281.66(a)(4).

⁹ Board Rule 281.60(c).

(C) continue or review professional education until the license holder attains a degree of skill satisfactory to the Board in each area that is the basis of the probation; or

(D) pay the Board a probation fee to defray the costs of monitoring the license.¹⁰

“Probation” means the suspension of a sanction imposed against a license during good behavior, for a term and under conditions as determined by the Board.¹¹

2. Evidence and Analysis

The ALJ will analyze the evidence, if any, relevant to the fourteen factors which the Board may, in its discretion, consider.

a. Moral Character in the Community; Involvement in Public Service Activities in the Community

Respondent stated that it is her passion to help people who need it. In the past, she worked for three years for the United Nations helping impoverished people in Nigeria with their medical and other needs. She has served the poor community in the United States since 2006 by volunteering for the food pantry through her church.

b. Employment History

Respondent has a Bachelor of Science degree in Pharmacy from Texas Southern University. She also has a Doctor of Pharmacy degree. She was employed as a pharmacist at St. Lukes Hospital from the time she graduated in 1992 until 1998, and at St. Joseph Hospital after that. She owned her own pharmacy business from 1998 until 2005. Currently she is working as the Coordinator of the food pantry.

¹⁰ Tex. Occ. Code § 565.051.

¹¹ Board Rule 281.61(1).

c. Financial Support

Respondent has three children, who are sixteen, twenty-nine, and thirty years old. Her older children have had to take out loans for their education because she has been unable to provide support for them. The youngest is still living at home and will need college tuition in the near future. Her husband is sixty-five years old and is retired.

d. Criminal History; Other Actions

Respondent has had no criminal history other than the conviction which was the basis for the revocation of her license. No other actions have been taken against her by any other state or federal agency.

e. Compliance with Agreed Order; Offers for Employment

Respondent has not pursued any employment in the area of pharmacy since she entered into the Order, which prohibits her from being employed as a pharmacist. Respondent has followed all provisions of the Order.

f. Any Physical, Chemical, Emotional, or Mental Impairment

Respondent does not take any medications and has never had any problems with substance abuse or disabilities.

g. Competency

Respondent testified that she worked hard to complete her training as a pharmacist. She has never had any complaints regarding her competence as a practicing pharmacist

h. Continuing Education

Respondent has taken thirty hours of continuing education relevant to pharmacy in each of the years that her license was revoked.

i. Gravity of the Offense and the Impact upon Public Health, Safety and Welfare

The evidence showed that Respondent pleaded guilty and was convicted of aiding and abetting the distribution of a controlled substance. The exact circumstances surrounding her crime were not in evidence. She was not incarcerated, but was placed on five years' probation and ordered to pay \$4,200.00, according to the judgment against her. The Board, in its rules, has indicated that the type of crime for which Respondent was convicted is extremely serious and poses a danger to public health, safety and welfare, but no evidence was submitted as to the specific impact that Respondent's actions had on public health, safety, or welfare.

j. Length of Time Since Revocation

Board Rule 281.66 states that the length of time since the disciplinary action was taken against Respondent's license should be considered as a factor in determining whether the time period has been sufficient for Respondent to have rehabilitated herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare. Respondent's license was revoked in 2005, eight years ago. Respondent testified that she has complied with the Order since the revocation. As further evidence of her rehabilitative efforts during that time, Respondent stated that she completed her five-year criminal probation (imposed in 2008) in only two and one-half years, and has already paid the fines assessed against her.

Respondent submitted evidence of good conduct and rehabilitative effort over the last eight years since her license was revoked. The evidence submitted by Respondent was sufficient to support a finding that the Order entered against her should be modified to reinstate her license with a period of probation under conditions that would provide the Board with reassurance that her good conduct and efforts at rehabilitation will continue and can be verified. Based on the

evidence submitted, the ALJ would recommend probation with a restriction that would prohibit Respondent from owning and operating her own pharmacy and a condition that would require her to inform her employer of her criminal history and the Board Order.

IV. FINDINGS OF FACT

1. Ansa Ene Hogan (Respondent) was issued pharmacist license no. 33036 on February 28, 1992, by the Texas State Board of Pharmacy (Board).
2. On November 2, 2005, Respondent entered into Agreed Order with the Board revoking her license (Order).
3. On October 9, 2007, in Case No. 4:06-CR00232-002, in the United States District Court for the Southern District of Texas, Respondent pleaded guilty to aiding and abetting distribution of a controlled substance and engaging in monetary transactions in property derived from the specified unlawful activity. The offenses ended in 2002. She was convicted and placed on probation for five years by a judgment imposed on December 3, 2008. She was ordered to pay an assessment of \$200.00 and a fine of \$4000.00.
4. The Board Order revoking Respondent's license stated that she was barred from applying for reinstatement for one year.
5. On March 15, 2011, six years following the Order, Respondent filed an application for reinstatement. Following an informal conference on October 13, 2011, the Board denied her application.
6. Respondent worked for the United Nations to help poor people in Nigeria with their medical and other needs. She is currently the coordinator of the food pantry in conjunction with her church program to help poor people in her community.
7. Respondent worked at St. Luke's Hospital as pharmacist after she graduated with a Bachelors of Science degree in Pharmacy in 1992. She also worked as a pharmacist at St. John's Hospital and, while working there, obtained her Doctor of Pharmacy degree. She operated her own pharmacy from 1998 until 2007.
8. Respondent completed five years' probation in two and one-half years and paid the fines imposed under the terms of her probation.
9. Respondent has had no criminal history other than the conviction that was the basis for the revocation of her license. No other actions have been taken against her by any other state or federal agency.
10. Respondent has followed all provisions of the Order.

11. Respondent has never experienced problems with substance abuse or other disabilities.
12. Respondent has taken thirty hours of continuing education relevant to her pharmacy license in each of the years that her license was revoked.
13. The type of crime for which Respondent was convicted is extremely serious and poses a danger to public health, safety, and welfare generally.
14. Respondent was not required to serve a period of incarceration as a result of her criminal conviction but rather was placed on five years' probation.
15. Respondent's criminal offenses ended approximately eleven years ago; her license was revoked approximately eight years ago; and the judgment imposing probation was entered approximately five years ago.
16. On January 23, 2013, Staff issued Respondent a notice of hearing and complaint, informing Respondent of the date, time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing would be held; the particular sections of the statutes and rules involved; and included a short, plain statement of the matter asserted.
17. The hearing convened April 9, 2013, before Administrative Law Judge Joanne Summerhays at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Tyler Vance, Staff Attorney. Respondent was represented by attorney Trevor Young. The record closed on the same date.

V. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter, pursuant to Texas Occupations Code, title 3, subtitle J (Texas Pharmacy Act), including the authority to sanction those who violate the Texas Pharmacy Act or the Board's administrative rules and the authority to reinstate a license after it has been revoked. Tex. Occ. Code § 565.102.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Timely and proper notice of the hearing was sent to Respondent. Tex. Gov't Code §§ 2001.051, .052; 1 Tex. Admin. Code § 155.401; 22 Tex. Admin. Code § 281.30.
4. Respondent has the burden to prove by a preponderance of the evidence that her license should be reinstated. Tex. Occ. Code § 565.101(c); 22 Tex. Admin. Code § 281.66(a)(3).

5. A person whose pharmacy license has been revoked may petition the Board for reinstatement twelve months after the license is revoked. Tex. Occ. Code § 565.01(a); 22 Tex. Admin. Code § 281.66(a).
6. On investigation and review of a petition for reinstatement, the Board may grant or deny the petition or may modify the Board's original finding to reflect a circumstance that has changed sufficiently to warrant the modification. Tex. Occ. Code § 565.102(a); 22 Tex. Admin. Code § 281.66(a)(4).
7. The Board may consider the following items in determining the reinstatement of Applicant's previously revoked or canceled license or registration: (1) moral character in the community; (2) employment history; (3) financial support to her family; (4) participation in continuing education programs or other methods of maintaining currency with the practice of pharmacy; (5) criminal history; (6) offers of employment in pharmacy; (7) involvement in public service activities in the community; (8) failure to comply with the provisions of the Board order revoking or canceling Applicant's license or registration; (9) action by other state or federal regulatory agencies; (10) any physical, chemical, emotional, or mental impairment; (11) the gravity of the offense for which Applicant's license or registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare; (12) the length of time since Applicant's license or registration was canceled, revoked or restricted, as a factor in determining whether the time period has been sufficient for Applicant to have rehabilitated herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare; (13) competency to engage in the practice of pharmacy; or (14) other rehabilitation actions taken by Applicant. 22 Tex. Admin. Code § 281.66(b).
8. The Board is authorized to impose suspension or revocation of a license; restrictions on a license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the Board; and probation and supervision by the Board for a period determined by the Board. Tex. Occ. Code § 565.051.
9. "Probation" means the suspension of a sanction imposed against a license during good behavior by the licensee, for a term and under conditions as determined by the Board. 22 Tex. Admin. Code § 281.61(1).
10. The Board has the discretion to reinstate Respondent's license and to modify the Order to impose probation and place any restrictions or conditions it deems necessary.

VI. RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law, the ALJ recommends that the Board modify the Order and reinstate Respondent's license with a probationary period of two years. In addition, the ALJ recommends that the Board include in its modification of the Order a restriction that prohibits Respondent from owning and operating her own pharmacy and a condition that requires her to inform her employer of her criminal history and the Board Order.

SIGNED May 8, 2013.

A handwritten signature in black ink, appearing to read 'Joanne Summerhays', is written over a horizontal line.

**JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**