

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

In the Matter of the Petition for an Interim
Suspension Order Against:

VAN NHU NGUYEN,
Pharmacist License Number RPH 66262

Respondent.

Agency Case No. 5493

OAH Case No. 2015060668

**RULING AND ORDER ON EX PARTE PETITION FOR
INTERIM SUSPENSION ORDER**

Virginia K. Herold (Petitioner), Executive Officer of the California Board of Pharmacy (Board), brought an ex parte petition for issuance of an Interim Suspension Order, suspending the pharmacy license of Van Nhu Nguyen (Respondent.)

On June 19, 2015, the hearing on the ex parte petition came before Laurie R. Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings, Los Angeles, California.

Gillian E. Friedman, Deputy Attorney General, represented Petitioner. Respondent was present at the hearing and represented himself.¹

Documentary evidence was presented and argument was heard. The matter was submitted for decision on June 19, 2015.

FACTUAL FINDINGS

1. On October 13, 2011, the Board issued Original Pharmacist License Number RPH 66262 (License) to Respondent to practice pharmacy in California. The License will expire on October 31, 2015, unless renewed.

2. Petitioner filed this Petition in her official capacity as the Board's Executive Officer. The Board is the state agency under the Department of Consumer Affairs charged

¹ Nathan Mubasher, counsel for Respondent, made a request to appear telephonically. Petitioner did not consent to the request, and it was denied.

with the administration and enforcement of the practice of pharmacy. Public protection is the Board's paramount duty.

3. Pharmacists carry out many important functions. They are responsible for ordering and stocking controlled substances, supervising pharmacy technicians and clerks, and keeping detailed records and control of pharmaceuticals. Pharmacists must comply with precise requirements to accurately fill detailed prescriptions and must ascertain whether a particular prescription may be safely given to a patient. A single lapse by a pharmacist could endanger a patient.

4. On June 16, 2015, written notice of the ex parte proceeding was provided to Respondent via an overnight delivery service and notice via telephone was given, in compliance with title 1, California Code of Regulations section 1012(b).

5. On October 2, 2012, Respondent began employment as a pharmacist at Highland Springs Pharmacy, in Beaumont, California. That pharmacy is part of the Loma Linda University Medical Center group of pharmacies. Respondent was also employed as a pharmacist at various CVS Pharmacy locations, where he served as a "floater".

6. On December 21, 2012, Respondent began forging prescription documents for self-administration of controlled substances. This conduct continued through 2013, during which time Respondent forged additional telephone prescriptions. By April 2015, Respondent had stolen numerous controlled substances from the shelves while working at Highland Springs Pharmacy and CVS Pharmacies, and had ingested those controlled substances.

7. On April 12, 2015, Respondent was working alone at Highland Springs Pharmacy. He was found by a facility security officer in the break room. Respondent had fallen and was bleeding from an injury to his head. Following a call to 911, Respondent was transported via ambulance to San Geronio Pass Hospital for treatment of his injury.

8. While at the hospital, Respondent was found to be in possession of controlled substances without a lawful prescription. The drugs were identified as: Tylenol with Codeine #4 [13 tablets], Clonazepam 2mg [1 tablet], Fiorinal with Codeine [3 capsules], Lorazepam 2mg [9 tablets], and Soma 350mg [22 tablets].

9. On April 13, 2015, Respondent admitted to Wayne Matthews, Director of Outpatient Pharmacies for Loma Linda University Medical Center, that he had been taking Soma (Carisoprodol) and/or Tylenol #4 (Acetaminophen with Codeine) without a doctor's prescription for two to three weeks prior to the April 12, 2015 injury. Respondent estimated that, while working, he had taken approximately 30 Soma tablets and 20 Tylenol with Codeine tablets off the shelf at Highland Springs Pharmacy over the last two to three weeks. He told Matthews that he believed his head injury had been caused by passing out at the pharmacy after he had ingested a combination of Xanax, Soma and Tylenol with Codeine, while working.

10. Respondent told Matthews that he was under a lot of stress in his personal life and at work. He stated that he worked many shifts at Highland Springs Pharmacy and at CVS Pharmacy locations, and rarely had a day off. He also stated that certain pharmacy customers make him angry and agitated, due to their "complaining and poor attitude." Respondent told Matthews that taking Soma or Tylenol with Codeine while at work made him feel "happy" and more eager to assist patients.

11. On May 22, 2015, Respondent reported to CVS loss prevention manager, Lucio Botello, and to CVS pharmacy supervisor, Gregory Harrington, that he had diverted six tablets of alprazolam 0.5 mg (Xanax) or alprazolam 1.0 mg (Xanax) for self-use from CVS Pharmacy. Respondent could not recall the strength of alprazolam or the specific date he had taken it. He was also unable to recall which store he had diverted the medication from, because he worked as a "floater" at more than one CVS location.

12. After May 22, 2015, Respondent's prescription profile was reviewed at Highland Springs Pharmacy. Commencing in December 2012, Respondent had forged telephone prescriptions at the pharmacy in either his name or in the name of the pharmacist in charge, without the pharmacist's knowledge or permission. He had forged prescriptions for Omeprazole, Denvair, Valacyclover, Voltaren 1% Gel, and Famotidine.

13. Respondent represented during oral argument that there is no need for issuance of an interim suspension order because he is no longer employed as a pharmacist and is participating in an addiction treatment program.

LEGAL CONCLUSIONS

1. An administrative law judge has authority, pursuant to Business and Professions Code section 494, to issue an interim suspension order against a respondent's license when it is determined that (1) the licensee has engaged in acts constituting a statutory violation; and (2) the public health, safety or welfare would be endangered if the licensee were allowed to continue to practice.

2. Business and Professions Code section 494, subdivision (b), provides that a petition for Interim Suspension Order may be heard ex parte, if it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

3. A preponderance of the evidence is the standard of proof required to obtain an interim suspension order. (Business and Professions Code section 494, subd. (e).)

4. Business and Professions Code section 4301 states, in pertinent part, that the board shall take action against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct includes:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

[¶] . . . [¶]

(p) Actions or conduct that would have warranted denial of a license. . . .

5. . . Business and Professions Code section 4060 provides that a person shall not possess any controlled substance without a valid prescription.

6. Business and Professions Code section 4323 states, in pertinent part:

"Every person who, in order to obtain any drug, falsely represents himself or herself to be a physician or other person who can lawfully prescribe the drug, or falsely represents that he or she is acting on behalf of a person who can lawfully prescribe the drug, in a telephone or electronic communication with a pharmacist, shall be punished by imprisonment in the county jail for not more than one year."

7. Petitioner established by a preponderance of the evidence that Respondent forged prescriptions, diverted and illegally self-administered controlled substances, and worked as a pharmacist while under the influence of multiple controlled substances.

8. There is a reasonable probability that Petitioner will prevail in the underlying action.

9. The declarations and exhibits supporting the Ex Parte Petition provide sufficient evidence that serious injury could result to the public if an interim suspension order is not issued on an ex parte basis. The likelihood of injury to the public in not issuing an interim suspension order outweighs the likelihood of injury to Respondent in issuing the order. Respondent's history of using his position as a pharmacist to forge prescriptions, and to steal and abuse controlled substances, clearly demonstrates that allowing him to continue to work as a pharmacist would endanger the public health, safety, and welfare.

10. Cause exists to issue an interim suspension order on an ex parte basis pursuant to Business and Professions Code sections 4301, subdivision (f) (commission of dishonest acts), subdivision (h) (illegal self-administration of controlled substances), and subdivision (j) (violation of the statutes regulating controlled substances and dangerous drugs), 4060 (possession of controlled substances without a lawful prescription, and 4323 (falsely representing himself to be a person who can lawfully prescribe controlled substances), as set out in Factual Findings 1- 12 and Legal Conclusions 1- 9.

11. The Board's paramount duty is to protect the people of California and enforce the pharmacy laws. (Business and Professions section 4001.1) Permitting Respondent to continue to engage in licensed activity would endanger the public health, safety or welfare. Respondent admittedly forged prescriptions and self-administered controlled substances, which he removed from pharmacy shelves. He worked as a pharmacist while under the influence of multiple controlled substances. In so doing, Respondent put patients at risk because his impairment may have rendered him unable to: comply with the precise requirements necessary to accurately complete a detailed prescription; take all steps necessary to confirm that a prescription may be safely given to a patient; supervise pharmacy technicians and clerks; and order controlled substances, stock shelves, and keep close records and control.

12. Respondent's actions were extremely serious and directly related to Respondent's fitness to practice as a pharmacist. His unprofessional conduct demonstrates a serious threat to the public and warrants immediate suspension of Respondent's license on an interim basis.


ORDER

1. Petitioner's Petition for an Interim Suspension Order suspending Respondent's pharmacy license is granted.

2. Pharmacist License No. RPH 66262, issued to Van Nhu Nguyen, and all licensing rights appurtenant thereto, are suspended on an interim basis. A noticed petition for interim suspension shall be timely served upon Respondent by Petitioner. The noticed petition shall be heard at the Office of Administrative Hearings, in Los Angeles, California, on July 8, 2015, at 10 a.m.

3. Respondent Van Nhu Nguyen shall do no act for which a pharmacist license is required.

Date: June 23, 2015


LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE**Case Name: VAN NHU NGUYEN****OAH No.: 2015060668**

I, Rosario Francisco, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 320 W. Fourth Street, Suite 630, Los Angeles, California. On June 23, 2015, I served a copy of the following document(s) in the action entitled above:

**RULING AND ORDER ON EX PARTE PETITION FOR
INTERIM SUSPENSION ORDER**

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Gillian E. Friedman, Deputy Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Facsimile Transmittal No.: (213) 897-2804

Van Nhu Nguyen
33346 Wallace Way
Yucaipa, CA 92339

Van Nhu Nguyen
P.O. Box 1602
Yucaipa, CA 92339

☒ **Overnight Delivery.** I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery fees paid at an office or a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.

☒ **Fax Transmission.** I personally transmitted the above-described document(s) to the person(s) at the fax number(s) listed above, from fax machine number **(213) 576-7244**, pursuant to Government Code section 11440.20 and California Code of Regulations, title 1, section 1008, subdivision (d). The fax transmission was reported as complete and without error. A copy of the transmission report showing the date and time of transmission, properly issued by the transmitting machine, is attached to this declaration of service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Los Angeles, California on June 23, 2015:


Rosario Francisco, Declarant