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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 Statement of Issues
Against:
14 **DUET PHARMACY**
15 **Community Pharmacy Permit Applicant**
16 Respondent.
17

Case No. 6854

STATEMENT OF ISSUES

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19
20
21 **PARTIES**

22 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
24 2. On or about January 14, 2019, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for a Community Pharmacy Permit from Duet Pharmacy
26 (Respondent). On or about January 11, 2019, Respondent certified under penalty of perjury to the
27 truthfulness of all statements, answers, and representations in the application. The Board denied
28 the application on October 8, 2019.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 118, subdivision (a), of the Code states:

6 “(a) The withdrawal of an application for a license after it has been filed with a board in
7 the department shall not, unless the board has consented in writing to such withdrawal, deprive
8 the board of its authority to institute or continue a proceeding against the applicant for the denial
9 of the license upon any ground provided by law or to enter an order denying the license upon any
10 such ground.”

11 **STATUTORY PROVISIONS**

12 5. Section 480 of the Code states, in relevant part:

13 “(a) A board may deny a license regulated by this code on the grounds that the applicant
14 has one of the following:

15 . . .

16 “(3)(A) Done any act that if done by a licentiate of the business or profession in
17 question, would be grounds for suspension or revocation of license.

18 . . .”

19 6. Section 4301 of the Code states:

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

23 . . .

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

27 . . .”

28 7. Section 4302 of the Code states:

1 15. Alphascript Inc. previously operated a pharmacy located at 1160 Industrial Road #17,
2 San Carlos, California, under Original Permit Number PHY 50690, until that license was
3 cancelled on or about September 22, 2018, due to change of ownership and location. At the time
4 of cancellation, Mr. Zukin was listed in the Board's records as Alphascript Inc.'s CEO and 100-
5 percent shareholder. Mr. Han was listed in the Board's records as COO and pharmacist-in-
6 charge.

7 16. Mr. Zukin is also currently listed in the Board's records as the CEO and 100-percent
8 shareholder of Medical Plaza Pharmacy, Original Permit Number PHY 45166. Mr. Han is
9 currently listed as the pharmacist-in-charge at Medical Plaza Pharmacy.

10 17. On March 25, 2019, the Board's inspector obtained records of dispensed prescriptions
11 and purchases of certain medications between April 11, 2016, and March 25, 2019, for
12 Alphascript Inc. and Medical Plaza Pharmacy. The Board's inspector conducted an audit to
13 determine whether certain drug stock was properly maintained. The inspector compared the
14 difference between quantities dispensed and quantities purchased. Under proper pharmacy
15 operations, these amounts would be close to the same.

16 18. The Board's inspector analyzed purchase and dispense records of Alphascript (PHY
17 56162) between September 22, 2018 and March 25, 2019, and determined substantial
18 discrepancies in the following drugs:

| Drug | Amount Purchased | Amount Dispensed/Billed to Insurance | Total Cost to Pharmacy | Overage Billed to Insurance |
|-----------------------------------|-------------------------|---|-------------------------------|------------------------------------|
| Sensipar | 14,670 | 24,786 | \$1,005,052 | \$410,195 |
| Prograf (tacrolimus) ¹ | 357,150 mg | 405,526 mg | \$2,637,143 | >\$300,000 |

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23 19. The Board's inspector analyzed purchase and dispense records of Medical Plaza
24 Pharmacy between March 25, 2016, through March 25, 2019, and determined substantial
25 discrepancies in the following drugs:

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27 ¹ Because Alphascript compounded preparations containing Prograf and the generic
28 tacrolimus, the Board's inspector converted all quantities of this drug to milligrams to account for
drugs dispensed as compounds but not purchased in that form.

| Drug | Amount Purchased | Amount Dispensed/Billed to Insurance | Total Cost to Pharmacy | Overage Billed to Insurance |
|----------------------|------------------|--------------------------------------|------------------------|-----------------------------|
| Genvoya | 39,210 | 47,351 | \$5,317,086 | >\$900,000 |
| Prograf (tacrolimus) | 3,177,500 mg | 4,005,166 mg | \$18,092,664 | >\$3,800,000 |
| Triumeq | 35,790 | 45,844 | \$4,862,296 | >\$1,000,000 |
| Truvada | 24,690 | 39,989 | \$2,480,508 | >\$900,000 |
| Sensipar | 28,560 | 41,335 | \$2,051,491 | >\$600,000 |

20. At the March 25, 2018 inspection, the Board's inspector was informed that Alphascript Inc. frequently dispensed prescriptions using drugs from its inventory, but that those prescriptions were billed to insurance companies as coming from Medical Plaza Pharmacy. This practice could potentially cause an inventory shortage of the dispensed drugs for Alphascript Inc. and an overage for Medical Plaza Pharmacy, based upon purchase and dispensing records. The Board's inspector combined the purchase and dispense records between the two pharmacies and found that discrepancies persisted that are not explained by the practice of moving prescriptions between the two pharmacies.

21. The Board's inspector analyzed records of Alphascript Inc. (PHY 50690) from between September 22, 2018, and March 25, 2019, and compared purchases and dispersions in that time period with those of Medical Plaza Pharmacy from the same time period. The following discrepancies persisted:

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| Drug | Discrepancy - Positive # reflects overage | Total Cost to Pharmacy |
|-----------------------------|--|-------------------------------|
| Genvoya | (10,590) | (\$1,016,184) |
| Sensipar 30 mg | 10,389 | \$267,759 |
| Sensipar 60 mg | 4,740 | \$244,141 |
| Sensipar 90 mg | 150 | \$11,742 |
| Triumeq | (1,132) | (\$103,287) |
| Truvada | (8,853) | (\$469,788) |
| Prograf/tacrolimus mg total | 155,281 | \$2,637,144 |

22. The Board's inspector further analyzed records of Alphascript (PHY 56162) from between April 11, 2016, and August 31, 2018, and compared purchases and dispersions in that time period to those of Medical Plaza Pharmacy from the same time period. The following discrepancies persisted:

| Drug | Discrepancy - Positive # reflects overage | Total Cost |
|-----------------------------|--|-------------------|
| Genvoya | 7,012 | \$787,384 |
| Sensipar 30 mg | 3,258 | \$102,317 |
| Sensipar 60 mg | 375 | \$23,559 |
| Sensipar 90 mg | 1,489 | \$140,602 |
| Triumeq | 2711 | \$287,533 |
| Truvada | 10,445 | \$647,901 |
| Prograf/tacrolimus mg total | 1,110,952 | \$5,216,923 |

CAUSE FOR DENIAL OF APPLICATION

(Fraudulent Act)

23. Respondent has subjected its application to denial under Code section 480, subdivision (a)(3)(A), in reference to Code sections 4301 and 4302, in that conditions exist in

1 relation to Respondent's CEO/President/Treasurer/Secretary/Director and COO that would
2 constitute grounds for disciplinary action against them and related entities Alphascript Inc. and
3 Medical Plaza Pharmacy due to acts involving fraud, deceit, or corruption and that such acts, if
4 done by a licentiate pharmacy would be grounds for suspension or revocation of license. The
5 circumstances are described above in paragraphs 13 through 22.

6 **PRAYER**

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

- 9 1. Denying the application of Duet Pharmacy for a Community Pharmacy Permit;
10 2. Taking such other and further action as deemed necessary and proper.

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12 DATED: 9/3/2020

Anne Sodergren

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

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