

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

In the Matter of the Accusation Against:

JOANNE HYOEUN LIM,

Intern Pharmacist No. INT 28768

Respondent.

Case No. 4812

OAH No. 2015100183

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on August 19, 2016.

It is so ORDERED on July 20, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 10, 2016, in San Diego, California.

Augustin Lopez, II, Deputy Attorney General, Department of Justice, State of California, represented Virginia Herold, the Executive Officer, Board of Pharmacy (board), Department of Consumer Affairs, State of California.

Herb L. Weinberg, Attorney at Law, Fenton Law Group, LLP, represented Joanne Hyoeun Lim.

The matter was submitted on May 10, 2016.

SUMMARY

Complainant sought to revoke Ms. Lim's pharmacy intern permit. The accusation alleged respondent is not fit to practice as a pharmacy intern because she engaged in unprofessional conduct when she shoplifted on three separate occasions. The board also sought to recover its enforcement costs.

Ms. Lim did not dispute that she shoplifted. Instead, she contended that she has been rehabilitated and is safe to practice as a pharmacy intern.

The issues to be decided are: Does cause exist to discipline Ms. Lim's license? And, if so, what is the appropriate discipline to protect the public from harm?

Based on the evidence presented, cause exists to discipline Ms. Lim's license. The appropriate discipline is revocation. The board's request to recover its enforcement costs is denied.

FACTUAL FINDINGS

Respondent's Pharmacy Intern Registration and Doctor of Pharmacy Degree

1. On October 21, 2011, the Board of Pharmacy issued Pharmacy Intern Permit Number INT 28768 to Ms. Lim. At all times relevant, the permit was in full force and effect and had an expiration date of on May 31, 2016, unless renewed or revoked. Ms. Lim had no prior discipline against her pharmacy intern permit.¹

2. In 2011 Ms. Lim enrolled in the Loma Linda School of Pharmacy, and in May 2015, she obtained her doctor of pharmacy degree. Ms. Lim has not applied for licensure as a pharmacist.

Jurisdiction

3. On June 14, 2014, complainant signed the accusation in her official capacity. The accusation and other required jurisdictional documents were served on Ms. Lim, who timely filed a notice of defense.

Testimony Regarding Pharmacy Intern Duties

4. Noelle Randall is a pharmacy board inspector. Ms. Randall's duties include inspecting pharmacies and answering questions from licensees and the public. She has conducted over 60 inspections. She has been licensed as a pharmacist since August 2009. Ms. Randall is familiar with the statutes and regulations that govern pharmacists, and she has worked with pharmacy interns. Ms. Randall testified regarding the duties and responsibilities of pharmacy interns. She also explained the importance of the character traits of honesty and sound judgment in a pharmacist intern.

5. Pharmacy interns are either enrolled in or have graduated from a pharmacy program. A pharmacy intern can do anything a pharmacist can do while under the supervision of a pharmacist, including filling prescriptions, dispensing medication, consulting with patients, and handling record keeping. The supervising pharmacist is ultimately responsible for what a pharmacy intern does. However, the supervising pharmacist may be doing other things while a pharmacy intern is working, and the pharmacy intern may work fairly independently.

¹ The terms "pharmacy intern," "intern pharmacist," and "pharmacist intern" were used interchangeably in the testimony and documents submitted.

6. It is important that pharmacy interns are honest and truthful. They have access to the same records as a pharmacist, including confidential medical histories and pharmacy records. They also have access to drugs, including controlled substances. They may encounter patients who are inappropriately seeking access to drugs or who are diverting, or attempting to divert, drugs. Pharmacy interns need to follow the law and exercise good judgment, including making decisions regarding when to consult the supervising pharmacist for guidance.

The July 5, 2011, Sephora Shoplifting Incident

7. On July 5, 2011, Anaheim Police Department officers responded to a call from a Sephora store in Downtown Disney regarding a suspected theft.² The officers positioned themselves outside the store and waited for Ms. Lim to exit. They observed her leave the store, and the store manager approach her. When the manager asked her if she had any merchandise she failed to purchase, Ms. Lim stated that she had forgotten to pay for some items. Then the officers handcuffed Ms. Lim and recovered merchandise from her purse. While the officers were conducting a search, Ms. Lim pulled a tube of lipstick from her pants pocket and said it had not been paid for and was Sephora's property. Ms. Lim had a Sephora receipt for the purchase of one bottle of nail polish for \$10.24. Ms. Lim also had \$99.92 in cash and an American Express card and a Visa card.

Ms. Lim told the police officers she was "on medications and seeing a psychologist" and asked if there was any way they could not file a case. She told them she took the items to give to friends, and she "wanted to see if the alarm system would go off." She said the only thing she purchased was nail polish for about \$10.00. She wanted to explain to the manager that she was sorry. She also said that she could not have a criminal case against her because she was in graduate school, and it would affect her forever. She did not want it to go on her record. She offered to pay Sephora double for the items and allow Sephora to keep the items as punishment.

² Arrest reports for each incident were entered into evidence. The reports provided the officers' observations, witness statements, and Ms. Lim's statements at the time of each of the incidents. *Lake v. Reed* (1997) 16 Cal.4th 448 considered the admissibility of police reports in administrative proceedings. In *Lake*, an officer's direct observations memorialized in the police report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and admissions by a party memorialized in the police report were admissible under Evidence Code section 1220. (*Id.* at pp. 461-462.) The *Lake* court noted that witness statements in the police report, which were not otherwise admissible under any hearsay exception, could be used to supplement or explain other admissible evidence, citing Government Code section 11513. (*Id.* at p. 461.) Government Code section 11513, subdivision (d), states: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." No objections were made to the admission of the police reports.

As a consequence, Ms. Lim was charged with violation of Penal Code sections 484, subdivision (a)-488, petty theft, a misdemeanor, in Orange County Superior Court Case No. 11NM14634. On April 23, 2012, that case was dismissed, pursuant to Penal Code section 1378, after Ms. Lim made restitution to the victim.³

The June 25, 2012, Bloomingdale's Shoplifting Incident

8. On June 25, 2012, a Newport Beach Police Department officer was called to a Bloomingdale's at Fashion Island after store security detained Ms. Lim on suspicion of shoplifting. The store's security personnel had retrieved merchandise and a silver magnet used to remove sensors from Ms. Lim before the officer arrived.

Upon the officer's arrival, Ms. Lim stated: "I know what I did was wrong, I won't do it again." When asked about the magnet, she said she had not used it in the store that day. The officer took the magnet and booked it into evidence. Ms. Lim had only \$13.14 in cash on her when she was arrested. After handcuffing Ms. Lim and taking her to the patrol vehicle, the officer asked her if she had any other stolen items in her car. She responded that she had dresses in her car, but she said she had paid for them. When the officer searched her vehicle, the officer found a large blue bag containing two dresses, two shirts, and a purse. Two of the items had Nordstrom tags on them. There were also four new Victoria's Secret bras in the glove box, without tags or receipts. The police report contained the following additional information:

Lim said she hadn't stolen those items. Lim said she was with 3 friends tonight in her car. I asked Lim if she had a receipt for the items in the bag or the bras. Lim said she did not and continued to repeat that she didn't steal the items, [sic] Lim said her three friends that were in the car with her had stolen the items. I asked Lim where her friends were when she was in Bloomingdale's. Lim said they were in the store with her but when she got caught, they left. Also during my search of Lim's vehicle, I located a plastic grocery bag in the driver's side door pocket. In the bag were over 100 tags from clothing items from multiple stores. Lim could not give me a reason for the tags. . . . Lim continued to make statements regarding the items in her vehicle. Lim continued to repeat that she had three friends with her who had stolen the items from her vehicle. Because Franco [a Bloomingdale's employee] had observed Lim the longest, I

³ Penal Code section 1378 states: "If the person injured appears before the court in which the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense."

recontacted him and asked him if he had seen any other suspects with Lim. Franco said Lim was alone when she was in Bloomindale's. He said there was never any person around her that would indicate they were with Lim.

The police report also stated:

Lim had three pieces of lined paper in her possession at the time of her arrest. On the pieces of paper were lists of stores at different locations. Under the store were clothing items listed. On the list I located the name "Victoria Secret" and listed under the store name was the Incredible push up bra size 36 B which was what was found in Lim's glove box. Also on the paper was listed "Blom Fashion Isla" and under that heading there were two kinds of Hanro Camisols [sic], which were what Lim was caught leaving Bloomingdale's with at Fashion Island. On another page, was, "Fashion Island" and under this listed was a Tadashi dress that is the same brand as the dress found in the bag in her vehicle. Also on this list is a [sic] Xscape black dress with a line crossing it out.

As a consequence, Ms. Lim was charged with violation of Penal Code sections 459-46, subdivision (b), burglary, second degree, commercial structure; violation of Penal Code sections 484, subdivision (a)-488, petty theft; and violation of Penal Code section 466, possession of burglary tools, all misdemeanors, in Orange County Superior Court Case No. 12HM09348. The case was dismissed on July 6, 2015.⁴

The September 10, 2012, Nordstrom Shoplifting Incident

9. On September 10, 2012, an Irvine Police Department officer responded to a call after Nordstrom's security personnel placed Ms. Lim in custody for suspected shoplifting. While she was inside Nordstrom, security personnel observed Ms. Lim taking a brown handbag and several items into dressing rooms and then exiting the dressing rooms with only the handbag. Nordstrom's security personnel detained her and found one blue shirt, one blue sweater, one maroon sweater, and one grey sweater inside the stolen brown handbag. The tags were missing from the merchandise recovered from Ms. Lim, and Ms. Lim had a silver sensor remover.

After the police officer arrived, Ms. Lim told the officer she suffered from several mental illnesses and gave a detailed account of the reasons she claimed she had shoplifted. The arrest report documented the information Ms. Lim provided the officer:

Lim explained to me that she was previously arrested in July 2012 for shoplifting. Lim also told me that she has several

⁴ The minute order for the dismissal did not mention Penal Code section 1378.

mental illnesses that cause her to steal merchandise. Lim stated that she has been diagnosed with Bipolar disorder and Schizophrenia. She said that she takes multiple medications for the illnesses. Lim also stated that she has Asperger syndrome, which is known as a form of Autism. Due to Lim's mental health illnesses, she stated that she has a tendency to steal merchandise from retail stores. She also explained that she is seeing a psychologist for her obsession with shoplifting.

On September 9, 2012, Lim said she was hanging out with her friend who she identified as Stacy Kim. Lim explained that Stacys' [sic] parents own a retail store in another city. Lim stated that Stacy asked Lim if she would be willing to steal clothing from several stores with her on 09-10-2012. Lim said Stacy then showed her that she has a magnetized device that she took from her parents' retail store. Stacy explained to Lim that it is used to remove the security tags from the merchandise. At the time, Lim stated that she did not take the magnetized device from Stacy.

On 09-10-2012, Lim stated she met Stacy at a cafe at the Irvine Spectrum. Lim was unable to provide an approximate time or location of their meeting. While they were at the cafe, Lim stated that Stacy brought the magnetized device so Lim could use it and steal the merchandise from a business. While at the cafe, Lim and Stacy discussed a plan on what stores to steal from. Lim stated that they decided that Stacy would go to Macy's [sic] and Lim would go to Nordstrom. Lim also explained that Stacy had a magnetized device in her possession as well. Lim explained to me that initially, she was hesitant to take the device but ultimately decided to take the device and follow through with the plan her [sic] and Stacy had just discussed. After speaking with Stacy, Lim stated that she proceeded to Nordstrom to steal the merchandise. Prior to entering the business, Lim stated she debated on carrying out the plan to steal merchandise from Nordstrom. At approximately 1610 hours, Lim stated she entered Nordstrom without her purse or wallet and was only carrying the magnetized device on her person. Lim stated once inside the business, she immediately grabbed a brown handbag. Lim said that she took the brown handbag for Stacy because she wanted it. After several minutes inside the business, Lim stated due to her mental conditions, she started to feel very cold and shaky. At that time, she said she proceeded up the escalator to grab several shirts and sweaters that she could wear to warm her body with. After several minutes upstairs, Lim stated that she then proceeded towards the

exit for the business. As I continued my investigation, Lim stated that she did not want to talk anymore. I stopped my investigation at that time. Lim was unable to provide me with any additional information regarding the burglary and never mentioned removing security tags.

The officer took Ms. Lim to her vehicle, from which she said she needed to retrieve her medication. While the officer was getting her medication, Ms. Lim told him she also had a jacket in the car that she had stolen earlier the same day, but she could not remember when or from which store she had stolen it. The officer found several shirts in Ms. Lim's car that she could not identify as her shirts, which she stated were not her size. The officer also found several pieces of notebook paper in the car that contained a list of merchandise. Ms. Lim told the officer that her friend, Stacy, had written the list; and Ms. Lim had nothing to do with it. The police officer retrieved the magnetized device as evidence.

As a consequence, Ms. Lim was charged with violation of Penal Code sections 459-460, subdivision (b), second degree commercial burglary, and Penal Code section 466, possession of burglary tools, misdemeanors, in Orange County Superior Court Case No. 12HM12018. The case was dismissed on July 6, 2015.⁵

Ms. Lim's Testimony

10. Ms. Lim provided testimony regarding why she believed she engaged in shoplifting. According to her, 2011 through 2012 was a difficult and dark time in her life. She experienced difficulty during those two years because she focused so much of her self-worth on her academic success. Her sister is a dentist, and her brother is a doctor. Ms. Lim voluntarily withdrew from dental school in 2004 and again in 2005, and she viewed those withdrawals as triggering events for her behavior. She did not explain why she withdrew from dental school. After she withdrew from dental school, she isolated herself and suffered from depression. Ms. Lim experienced feelings of self-loathing and would sometimes injure herself, including bruising and stapling herself.

11. Ms. Lim sought treatment from a psychiatrist, Dr. Ghudapati, and was prescribed Adderall, a stimulant commonly prescribed for Attention Deficit Disorder (ADD).⁶ Now, Ms. Lim believes that she was misdiagnosed with ADD. Ms. Lim stated that the stimulant made her feel energized, bold, and reckless, and she did not care about the consequences of her actions. Although Ms. Lim felt negative side effects from Adderall shortly after she began taking it, she did not stop taking the medication because it made her feel better. She claimed that she had never stolen before being prescribed Adderall, which

⁵ The minute order for this dismissal did not mention Penal Code section 1378.

⁶ In a letter from Ms. Lim's current psychiatrist, her doctor referred to the diagnosis as Attention Deficit and Hyperactivity Disorder (ADHD); Ms. Lim referred to it as ADD during her testimony.

she began taking in 2008. She also claimed that the only time she stole was during 2011 and 2012, the same years during which she was arrested for shoplifting. She stated she felt temporary relief from shoplifting. She felt it was easier to "take action on emotion." It distracted her and made her feel happy. Ms. Lim became obsessed with items celebrities wore. She would obsess day and night about getting the items, and she would shoplift to obtain the items.

12. When she was asked questions about statements she made to the police at the time of her arrests, Ms. Lim testified that she did not doubt that she said what the police officers wrote in their reports, but she could not remember the specific details of what she said. She did not remember what she stole, and she did not remember blaming any friends. During her testimony, Ms. Lim admitted that she did not know anyone named Stacy Kim. She also admitted that she obtained the magnetized device online, as opposed to getting it from a friend as she had told the police.

13. During her testimony, Ms. Lim admitted she had shoplifted other times, but she did not know how many times. She made restitution to the victims of the shoplifting incidents that resulted in her arrests. However, she did not make restitution to any victims of the times she shoplifted when she was not caught. When asked if she benefited financially from the times she shoplifted but was not arrested, she denied any financial benefit because she was unsure if she "ever wore" the items she stole.

14. Ms. Lim admitted that she had not been diagnosed with all of the mental disorders that she mentioned to the police officers. She was not ever diagnosed with Schizophrenia or Asperger's Syndrome. She was diagnosed with anxiety, bipolar disorder, and depression. When asked when she received the anxiety, bipolar disorder, and depression diagnoses, Ms. Lim mentioned the Partial Hospital Program that she did not attend until 2013, after the arrests. Her testimony regarding when she received her diagnoses was confusing.

15. Ms. Lim testified that she believes that she has been "cured," although she "is still a work in progress." She does not believe she will relapse. She stated that she is embarrassed and ashamed of what she did. She does not believe she has a propensity for theft, as she blamed her shoplifting on Adderall, the medication she was taking. According to Ms. Lim, she last took Adderall in June 2014. Ms. Lim continues to suffer from depression and anxiety.

16. Ms. Lim's testimony was not credible due to the discrepancies between what she told the police officers at the time of her arrests and her sworn testimony during the hearing. Ms. Lim testified that the statements she gave the police were made as a "reaction" to "protect" herself. She provided no further explanation for the differences between her testimony and the information she gave the police officers. In particular, she did not explain why she gave the police an elaborate story about the involvement of a person named "Stacey Kim," when she did not know any such person. Also, she did not provide further insight into why she told the police officers she was diagnosed with mental disorders with which she had not been diagnosed. The most reasonable conclusion drawn from her explanation that her

statements to police officers were “reactions” to “protect” herself is that Ms. Lim is willing to lie in order to avoid responsibility for her actions.

Respondent's Treatment

17. Although Ms. Lim testified that she has been in treatment for her mental health issues, including stating that she participated in a Partial Hospital Program at Loma Linda Behavioral Medical Center, she did not provide many details regarding the treatment she has received. During her testimony, Ms. Lim admitted that even though her current doctor discontinued her Adderall prescription, Ms. Lim continued to obtain Adderall prescriptions from another doctor until June 2014. Ms. Lim presented three letters, dated June 29, 2015, November 11, 2015, and April 27, 2016, from her current psychiatrist, Melissa Pereau, M.D., whose letters explained and supplemented some of the information Ms. Lim provided about her symptoms and treatment.⁷

18. Dr. Pereau is a psychiatrist and the medical director of the Adult Inpatient Unit and Partial Hospital Program at the Loma Linda Behavioral Medical Center. According to Dr. Pereau's letters, Ms. Lim has been under her care since July 2013, when she presented for treatment for severe depression and anxiety. Dr. Pereau referred Ms. Lim to the outpatient Partial Hospital Program (PHP) for treatment of depression and anxiety, where she was enrolled from July 16, 2013, through September 6, 2013. She was discharged from PHP in September 2013; at that time, her prescription for Adderall was discontinued.

19. Dr. Pereau's June 29, 2015, letter states that “[o]n April 28, 2014, it was discovered that . . . Joanne had been following up with her previous outpatient psychiatrist, Dr. Ghudapati, who continued to prescribe Adderall.” After discovering that Ms. Lim was continuing to take Adderall prescribed by a different doctor, Dr. Pereau instructed Ms. Lim to stop taking Adderall, and re-enrolled Ms. Lim in PHP. Based on neurocognitive test results, Dr. Pereau determined that Ms. Lim did not meet the diagnostic criteria for ADHD.⁸ According to Dr. Pereau's June 29, 2015, letter, Ms. Lim has not taken Adderall since June 2014.

⁷ Dr. Pereau's letters were admitted into evidence as administrative hearsay. Under Government Code section 11513, subdivision (d), administrative hearsay “may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.” Accordingly, only the information in Dr. Pereau's letters that supplemented or explained other, non-hearsay, evidence was considered.

⁸ While this may explain why Ms. Lim currently believes that she was previously misdiagnosed with ADD, it does not prove that there was a prior misdiagnosis. No expert testimony was presented regarding any misdiagnosis.

20. In Dr. Pereau's most recent, April 27, 2016, letter, she stated that Ms. Lim's diagnosis remained: "Major Depressive Disorder, Recurrent episode, Severe with Anxious Features, with specifier In Remission."⁹ Also, in that letter, Dr. Pereau stated:

While I cannot comment on her competency as a pharmacist, I can attest that I have no concern about her ability to make ethical decisions. She shows contrition for her behaviors in the past and has made all attempts to take responsibility for her actions. She has shown remarkable progress over the past 3 years of treatment. I have no concerns about her choice to move forward in pursuing a career as a pharmacist. In many ways, Joanne today is unrecognizable from who she was when I first met her. She is calm, composed, and able to manage stress in healthy ways. She has worked hard to get to where she is today and I plan to continue to treat Joanne, providing close monitoring. . . .

21. In Dr. Pereau's letters, she also opined about what she believed may have caused Ms. Lim to shoplift. However, because Dr. Pereau's letters were only admitted as administrative hearsay, her out of court statements were not sufficient in themselves to support findings. (Gov. Code, § 11513, subd. (d).) Furthermore, California courts have repeatedly underscored that an expert's opinions are only as good as the facts and reasons upon which the opinions are based. "Like a house built on sand, the expert's opinion is no better than the facts on which it is based." (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923.) In the present case, there was no indication that the source of Dr. Pereau's information regarding Ms. Lim's symptoms and criminal behavior was anything other than Ms. Lim's own reports. Nor was there sufficient evidence presented to show Dr. Pereau possesses sufficient knowledge and experience to qualify as an expert witness on the subject of the causes of Ms. Lim's behavior. (See Evid. Code, § 720.) Accordingly, the opinions presented in Dr. Pereau's letters regarding the causes of Ms. Lim's shoplifting were not given any weight.

Ms. Lim's Brother's Testimony

22. Ms. Lim's brother, George Lim, M.D., an emergency room doctor, testified on respondent's behalf. Dr. Lim attested to his belief that his sister is fully rehabilitated. He described her while they were growing up as a jovial, kind hearted, and generous child. He had a close relationship with her until she graduated from college. According to Dr. Lim,

⁹ Although official notice was taken of excerpts from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV), no expert testimony was presented regarding the DSM IV. Due to the absence of expert testimony explaining the significance of the DSM IV excerpts, those excerpts were not given any weight. (*See Miller v. Los Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689,702 "[i]f the matter in issue is one within the knowledge of experts *only* and not within common knowledge of laymen, it is necessary . . . to introduce expert opinion evidence. . . .")

after his sister left her graduate dental school program, she changed and began a downward spiral. She became distant, irritable, angry, irrational, and forgetful. He blamed the changes on the Adderall she was prescribed, which he stated caused side effects in her of a false sense of confidence, aggression, disinhibition, and irritability. Dr. Lim testified that he trusts his sister and is grateful to "have her back." He believes she is emotionally ready to practice pharmacy.

Character Letters

23. Ms. Lim also presented three character letters, two from pharmacists Shirley Kim, Pharm. D., and Monique Y. Moore, Pharm. D., with whom she worked briefly as a pharmacist intern, and a third letter from a former classmate who is now a pharmacist.

24. Dr. Kim and Dr. Moore's letters attested to Ms. Lim's competence as a pharmacy intern. Dr. Kim is the Anticoagulation Pharmacist Manager at St. Jude Heritage Medical Group, where Ms. Lim worked during a six-week rotation in ambulatory care. She described Ms. Lim as "able to show competency in every aspect of our work." Dr. Moore is the pharmacist-in-charge at Loma Linda Community Pharmacy, where Ms. Lim spent six weeks in 2014 during her community pharmacy rotation. Dr. Moore described Ms. Lim as having "a professional and ethical attitude." Ms. Lim did not tell either Dr. Kim or Dr. Moore about her shoplifting arrests.

25. Octaviano Mora, who attended Loma Linda University School of Pharmacy with Ms. Lim from 2011 through 2015, also provided a letter in support of Ms. Lim. In his letter, he noted he was aware of the accusation and stated that Ms. Lim's "character has undergone a metamorphosis, from that of a closed off, depressed loner to the emotionally healthy person I know today." His letter also stated that she "has taken dramatic steps towards being a responsible, honest citizen. Over the course of the last few years, Joanne has confided to me that she deeply regrets her actions and does not understand what was fully going through her mind when she got herself into legal trouble. I see her now as a totally different person from the Joanne I first met."

Request for Recovery of Enforcement Costs

26. Complainant seeks recovery of enforcement costs of \$7,260.00. Complainant did not submit a declaration from the deputy attorney general who handled the case, or anyone, to support the cost recovery request. Complainant submitted Department of Justice documents entitled "Cost of Suit Summary" and "Master Time Activity by Professional Type" that identified the tasks performed by attorneys and paralegals, the time spent on each task, and the hourly rate.

Ms. Lim did not object to, or claim that any hardship would result if she were required to pay, the requested costs.

LEGAL CONCLUSIONS

1. The main purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

The Standard and Burden of Proof

2. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 583.)

3. The standard of proof in an administrative proceeding seeking to suspend or revoke a license that requires substantial education, training, and testing, such as the pharmacy intern permit at issue here, is "clear and convincing evidence" to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) "Clear and convincing evidence" means evidence that is "so clear as to leave no substantial doubt"; 'sufficiently strong to command the unhesitating assent of every reasonable mind.' [Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

4. In a disciplinary proceeding, the burden of proof is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

Applicable Disciplinary Statutes and Regulations

5. Pharmacist interns are licensed under Business and Professions Code section 4208. An intern pharmacist permit may be issued to persons who are "enrolled in a school of pharmacy recognized by the board," or who are graduates of a school of pharmacy recognized by the board and have applied to be licensed as pharmacists. (Bus. & Prof. Code, § 4208, subd. (a).)

6. Pursuant to Business and Professions Code section 4114, subdivision (a), "[a]n intern pharmacist may perform all the functions of a pharmacist at the discretion of and under the direct supervision and control of a pharmacist whose license is in good standing with the board."

7. Business and Professions Code section 4300 et seq., governs disciplinary actions against persons licensed by the pharmacy board. Business and Professions Code section 4301 states, in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . . [¶]

(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.

[¶] . . . [¶]

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

8. Under Business and Professions Code section 480, subdivision (a)(2), the board may deny a license to an applicant who has engaged in “any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.”

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

Cause Exists to Impose Discipline

10. Pharmacy interns occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy interns have access to confidential personal and financial information of consumers and to highly regulated and dangerous medications, including controlled substances. Respondent’s conduct, both when she engaged in shoplifting and when she made misrepresentations to law enforcement when she was caught, involved moral turpitude, dishonesty, and fraud. Also, her behavior demonstrated a willingness to disobey the law; which is inconsistent with the public health, safety, and welfare. Her conduct was substantially related to the qualifications, functions, and duties of a pharmacy intern.

11. Complainant established by clear and convincing evidence that, on July 5, 2011, Ms. Lim engaged in unprofessional conduct when she engaged in shoplifting. Her actions amounted to conduct that would have warranted denial of a license. Accordingly, cause exists to discipline respondent’s pharmacy intern permit under Business and

Professions Code section 4301, subdivisions (f) and (p), and California Code of Regulations, title 16, section 1770.

12. Complainant established by clear and convincing evidence that, on June 25, 2012, Ms. Lim engaged in unprofessional conduct when she engaged in shoplifting. Her actions amounted to conduct that would have warranted denial of a license. Accordingly, cause exists to discipline respondent's pharmacy intern permit under Business and Professions Code section 4301, subdivisions (f) and (p), and California Code of Regulations, title 16, section 1770.

13. Complainant established by clear and convincing evidence that on September 10, 2012, Ms. Lim engaged in unprofessional conduct when she engaged in shoplifting. Her actions amounted to conduct that would have warranted denial of a license. Accordingly, cause exists to discipline respondent's pharmacy intern permit under Business and Professions Code section 4301, subdivisions (f) and (p), and California Code of Regulations, title 16, section 1770.

Appropriate Measure of Discipline

14. When considering disciplinary action, the board is required to consider its disciplinary guidelines. (Cal. Code Regs., tit. 16, §1760.) The pharmacy board's disciplinary guidelines divide violations into categories and recommend discipline based on the category of the violation. Violations of Business and Professions Code section 4301 fall under Category II. The maximum recommended discipline for a Category II violation is revocation. The minimum recommended discipline is revocation, stayed, and three years' probation.

15. Additionally, the pharmacy board's disciplinary guidelines provide that:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations

6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

Applicable Law Regarding Rehabilitation

16. When determining whether to discipline a licensee, the pharmacy board "shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence." (Bus. & Prof. Code, § 4313.)

17. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) "While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . ." (*In re Conflenti* (1981) 29

Cal.3d 120, 124-125.) Mere remorse does not demonstrate rehabilitation. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

18. Applying the factors set forth in the board's guidelines in this matter: Respondent has no prior disciplinary record. The arrests took place over three years ago. Respondent made restitution to the three stores after her arrests, and the criminal charges against her were dismissed. She was not convicted of any crimes. She was candid about the fact that she committed thefts other times, when she was not arrested. However, Ms. Lim admitted that she has not made restitution to the other victims of instances when she shoplifted but was not caught. While she claimed she did not benefit financially from the other thefts she committed, she failed to recognize that even if she did not wear the items she stole that she still benefited. The conduct occurred outside the course of respondent's job as a pharmacy intern, and no pharmacy consumer was injured. However, the public was harmed. The conduct was very serious, as it involved theft and dishonesty. Respondent has undergone treatment since 2008, which includes the timeframe when the arrests occurred, and she continues to participate in treatment. She sincerely expressed her embarrassment and shame for her conduct.

19. Although Ms. Lim expressed remorse at the hearing, she still avoided taking responsibility for her actions. Ms. Lim claimed her behavior was triggered by her withdrawal from dental school in 2004 and 2005, over six years before her first arrest, and she blamed her crimes on medication she was taking from 2008 through June 2014. While she insists that she only shoplifted during the years 2011 and 2012, those years just happen to be the years when she was arrested.

20. Perhaps most troublesome in this case are the facts that show a propensity for dishonesty. Not only did Ms. Lim shoplift, but she also lied to the police when she was caught. She provided the police with an elaborate account of the involvement of a person who she admitted during the hearing does not even exist. She represented to the police that she had been diagnosed with mental disorders of which she had never been diagnosed. Her claim that she lied to the police to "protect" herself is disconcerting, as it demonstrates an unwillingness to be honest and straight forward when confronted with problems and an inability to accept responsibility for her actions. She did not tell two of the persons who provided reference letters for her about her criminal conduct. She continued to seek and take Adderall from another doctor for nearly a year after her current psychiatrist discontinued her Adderall prescription.

21. Given the issues with her credibility and the fact that she blamed her criminal behavior on events that occurred in 2004 and 2005 and medication she took from 2008 through 2014, there is serious doubt regarding whether the only years during which she shoplifted were 2011 and 2012 as she claimed.

22. Accordingly, Ms. Lim's claim that she has been rehabilitated and is now safe to practice is not persuasive. Under the circumstances, it is not in the public interest to allow Ms. Lim to practice as a pharmacy intern at this time. Accordingly, the appropriate discipline is revocation of Ms. Lim's pharmacy intern permit.

Denial of Recovery of Costs of Enforcement

23. Business and Professions Code section 125.3 provides, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

24. California Code of Regulations, title 1, section 1042, subdivision (b), provides, in part:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed,

the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

25. Here, although complainant presented a print out that contained the tasks performed, time spent on each task, and the method of calculation, and no objection was made to the recovery of costs documentation submitted, complainant did not submit a declaration certifying the enforcement costs requested. Under California Code of Regulations, title 1, section 1042, subdivision (b)(2), a declaration by the deputy attorney general is necessary to prove the enforcement costs sought. Because no such declaration was submitted, the requested costs are denied.

ORDER

1. Pharmacy Intern Permit Number INT 28768, issued to respondent, Joanne Hyoeun Lim, is revoked.
2. The request for recovery of enforcement costs is denied.

DATED: June 7, 2016

DocuSigned by:
Theresa M. Brehl
ABBD1C95E104AE

THERESA M. BREHL
Administrative Law Judge
Office of Administrative Hearings

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8
9 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4812

12 **JOANNE HYOEUN LIM**
13 **1450 Nicolas Way**
14 **Fullerton, CA 92833**

ACCUSATION

15 **Intern Pharmacist No. INT 28768**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about October 21, 2011, the Board of Pharmacy issued Intern Pharmacist
23 Number INT 28768 to Joanne Hyoeun Lim (Respondent). The Intern Pharmacist was in full
24 force and effect at all times relevant to the charges brought herein and will expire on May 31,
25 2016, unless renewed.

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1 JURISDICTION

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300.1 of the Code states:

10 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
11 operation of law or by order or decision of the board or a court of law, the placement of a license
12 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
13 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
14 proceeding against, the licensee or to render a decision suspending or revoking the license."

15 STATUTORY PROVISIONS

16 6. Section 4301 of the Code states:

17 "The board shall take action against any holder of a license who is guilty of unprofessional
18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
19 Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

24 REGULATORY PROVISIONS

25 7. California Code of Regulations, Title 16, section 1770, states:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 COST RECOVERY

5 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 FIRST CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct: Petty Theft)

11 9. Respondent is subject to disciplinary action for unprofessional conduct under section
12 4301(f) and (p), and California Code of Regulations Title 16, section 1770 in that Respondent
13 was charged with violation of Penal Code section 484(a)-488, Petty Theft, a misdemeanor. The
14 circumstances are as follows:

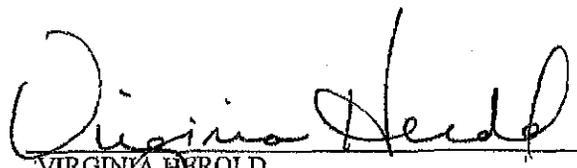
15 10. On or about July 5, 2011, Respondent entered the Sephora department store in
16 Downtown Disneyland. Store personnel observed Respondent conceal items on her person and
17 exit the store without paying for the concealed items. The store's manager confronted
18 Respondent outside of the store. Respondent claimed to have forgotten to pay for the items. The
19 store manager escorted Respondent to the police station where upon an inventory was conducted
20 revealing Sephora merchandise in Respondent's possession valued at or about \$535.50.
21 Respondent was then arrested. Respondent admitted to taking the merchandise without paying
22 for the merchandise and with the intent to give the merchandise to friends.

23 11. Respondent was cited by Anaheim Police Department personnel for violations of
24 Penal Code ("PC") 484(a)-488 Petty Theft and subsequently charged with violation of PC 484(a)-
25 488 Petty Theft in Orange County Superior Court criminal case *People v. Joanne Hyeun Lim*,
26 case number 11NM14634. The criminal case was dismissed on April 23, 2012, pursuant to PC
27 section 1378; Acknowledgement by the Victim of Satisfaction.

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DATED: 6/14/14



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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