

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

In the Matter of the First Amended Accusation
Against:

MIRA J. ZEFFREN,
Pharmacist License No. RPH 41239

Respondent.

Case No. 5070

OAH No. 2014100093

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 on November 6, 2015.

It is so ORDERED on October 7, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the First Amended
Accusation Against:

MIRA J. ZEFFREN,
Pharmacist License No. RPH 41239,

Respondent.

Case No. 5070

OAH No. 2014100093

PROPOSED DECISION

On July 9, 2015, Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter in Los Angeles. Complainant was represented by Michael A. Cacciotti, Deputy Attorney General. Respondent Mira J. Zeffren was present and represented by Herbert L. Weinberg, Attorney at Law.

At the outset of the hearing, complainant's counsel amended the First Amended Accusation by interlineation as follows: on page 4, paragraph 10a, line 24, the date of "September 26, 2012" was stricken and replaced by the date of "May 2, 2012"; and at line 27, the phrase "On November 26, 2012," was added before the sentence that begins on that line. Respondent did not object to the amendments.

At the conclusion of the evidentiary hearing and after complainant's counsel presented an oral closing argument, respondent's counsel asked to submit a written argument. Complainant's counsel did not object. The request was granted and respondent's counsel was directed to file a written argument by the close of business on July 17, 2015. Complainant's counsel indicated that he would not file a written closing argument. On July 16, 2015, respondent's counsel filed a Written Closing Argument, which was marked for identification as Exhibit F.

Oral and documentary evidence and arguments having been received or filed, the Administrative Law Judge submitted this matter for decision on July 16, 2015, and finds as follows:

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FACTUAL FINDINGS

1. (A) The Administrative Law Judge takes official notice that, on August 12, 2014, the Accusation, Case Number 5070, was made and filed by complainant Virginia Herold in her official capacity as the Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

(B) The Administrative Law Judge takes official notice that, on March 13, 2015, the First Amended Accusation, Case Number 5070, was made and filed on behalf of complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board).

2. On September 26, 1987, the Board issued original registered pharmacist license number RPH 41239 and licensing rights to Mira J. Zeffren (respondent) to practice pharmacy in the State of California. Said license is in full force and effect and will expire on December 31, 2016, unless renewed. Respondent does not have any history of disciplinary action with the Board.

3. On July 15, 2002, the Board issued original pharmacy permit number PHY 46023 to Kyffin Pharmacy, Inc., to do business as Kyffin Pharmacy at 6000 Woodman Avenue, Van Nuys, California. From July 15, 2002, through January 11, 2009, respondent was the president of Kyffin Pharmacy, Inc. The records of the Board also show that respondent was the initial pharmacist-in-charge of Kyffin Pharmacy for less than two months from July 15, 2002, to September 1, 2002. Thereafter, other licensed pharmacists were hired to perform the duties of a pharmacist-in-charge at Kyffin Pharmacy.

4. Respondent attained her doctorate in pharmacy from St. Louis College of Pharmacy in 1985 and was licensed first as a pharmacist in Missouri in the same year. In 1987, respondent and her husband moved to California and she worked at the Veterans Administration hospital while studying and sitting for the Board licensure examination. After she obtained her registered pharmacist license in September 1987, respondent worked for a series of closed-door pharmacies over the next 15 years. In those jobs, she consulted with nurses at long-term care facilities and skilled nursing homes, reviewed patient charts, and counseled facility staff on inappropriate prescribing practices. In October 1992, while working as a pharmacist for Patient Care Pharmacy, respondent conducted a study and wrote article entitled, "Inappropriate Medication Prescribing in Skilled-Nursing Facilities," that was published in the Annals of Internal Medicine. As the pharmacy business contracted in the 1990's with larger companies buying out small retail pharmacies, respondent continued working for different closed-door pharmacies.

5. (A) In or about 2002, respondent formed Kyffin Pharmacy, Inc. (also company), with several investors or shareholders, including her father. Respondent was the president and majority shareholder of the company. The company purchased

a retail pharmacy and converted the premises into a closed-door pharmacy. As the president, respondent was responsible for the business operations of Kyffin Pharmacy, Inc., but not necessarily the pharmacy operations. She obtained customers for the company. She dealt with skilled nursing homes and long-term facilities as well as drug wholesale companies. She reviewed patient charts and interfaced with inspectors from the Department of Health Services. Kyffin Pharmacy, Inc., hired pharmacists-in-charge, staff pharmacists, pharmacy technicians, and administrative assistants to staff and operate the closed-door pharmacy.

(B) Seven years later, on November 25, 2009, Kyffin Pharmacy was closed after respondent, as president of the company, entered into a stipulation with the Board for the surrender of the company's pharmacy permit. While she was the president of Kyffin Pharmacy, Inc., respondent was concurrently engaged in a tax fraud scheme, which resulted in her criminal conviction. The criminal conviction is the primary cause for the Board's action to discipline respondent's pharmacist license in this matter.

Criminal Conviction

6. (A) On January 19, 2011, the United States Attorney's Office filed a five-count Grand Jury Indictment against respondent in the United States District Court, Central District of California. Under the Indictment, respondent was charged with one count of conspiracy to defraud the United States by impeding or obstructing the governmental functions of the Internal Revenue Service (IRS) by deceitful and dishonest means, two counts of filing false and incorrect joint personal tax returns for the years 2005 and 2006, and two counts of filing false and incorrect corporate income tax returns on behalf of Kyffin Pharmacy, Inc., for the years 2005 and 2006.

(B) On April 23, 2012, respondent entered into a Plea Agreement with the United States Attorney's Office wherein she agreed to plead guilty to the charge of conspiracy. On April 25, 2012, the Plea Agreement was filed with the federal court.

(C) On May 3, 2012, respondent entered a plea of guilty in court to the charge of conspiracy. The federal court questioned respondent regarding her plea, found a factual and legal basis for her plea, and accepted and entered the plea in the record. The federal court then ordered the preparation of a pre-sentence report and continued the case for a sentencing hearing.

7. (A) On November 26, 2012, before the United States District Court, Central District of California, in *United States v. Mira Zeffren*, Docket Number CR 11-42-JFW, respondent was convicted on her plea of guilty of conspiracy in violation of Title 18, United States Code, part 371, a felony and a crime involving moral turpitude.

(B) Based on her plea, the federal court adjudged respondent guilty and convicted and sentenced her to commitment in the custody of the Bureau of Prisons for a term of eight months. The court ordered that, upon her release from imprisonment, respondent was to report to the probation officer within 72 hours and be placed on supervised community release for a term of two years under the standard terms of probation and supervised release, as well as the following additional terms and conditions: comply with the rules and regulations of the United States Probation Office; pay the special assessment of \$100, a fine of \$30,000, and restitution to the IRS of \$84,294; perform 500 hours of community service; truthfully and timely file and pay taxes for the years of conviction and during the period of community supervision; cooperate in the collection of a DNA sample from her; and apply all monies received from income tax refunds, lottery winnings, inheritance, judgments, and any anticipated or unexpected financial gains to any outstanding court-ordered financial obligations. The federal court recommended that respondent serve her prison sentence at the federal camp facility in Danbury, Connecticut. The other counts of the Indictment were dismissed on the motion of the United States Attorney's Office.

8. (A) The facts and circumstances of respondent's conviction for conspiracy are as follows: Beginning on an unknown date and continuing through on or about December 19, 2007, respondent participated with her sister and father, elderly members of the Orthodox Jewish faith, and Holocaust survivors, in a deceitful and dishonest scheme to defraud the IRS through the making of false charitable contributions to a religious group called Spinka and the filing of fraudulent tax returns.

(B) Spinka was a religious group within Orthodox Judaism that had established a variety of charitable organizations. These Spinka charitable organizations were public charities and contributions made to them could be tax deductible under the Internal Revenue Code. Respondent and other participants in the scheme made contributions to the Spinka charitable organizations and were issued receipts for their purported charitable contributions in the full amount of their contributions. To purportedly help solicit charitable contributions to these charitable organizations, religious leaders of Spinka secretly refunded 90 to 95 percent of the contributions to the contributing conspirators. The conspirators used the receipts to fraudulently claim the full amounts of their contributions to the Spinka charitable organizations as tax deductions or expenses on their federal income tax returns when, in fact, they had contributed only five to 10 percent of the claimed amounts to the charities.

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(C) For tax years 2004 through 2007, respondent made contributions to Spinka charitable organizations which were drawn on her personal bank account as follows:

<u>Tax Year</u>	<u>Contributions</u>
2004	\$5,000
2005	\$10,000
2006	\$75,000
2007	\$92,000
Total	\$182,600

Respondent also made contributions to Spinka charitable organizations drawn on the account of Kyffin Pharmacy or Kyffin Pharmacy, Inc., for which she was president and majority shareholder, as follows:

<u>Tax Year</u>	<u>Contributions</u>
2004	\$30,000
2005	\$80,000
2006	\$277,500
2007	\$295,700
Total	\$683,200

(D) For the tax years 2004 through 2007, respondent made a total of \$865,800 in contributions to Spinka charitable organizations which were drawn on both her personal bank account and the business bank account of Kyffin Pharmacy, Inc. During these same years, respondent accepted refunds or kickbacks of her contributions from Spinka totaling \$805,194, which constituted 93 percent of her contributions. In other words, seven percent, or \$60,606, of respondent's contributions inured to the benefit of the Spinka charitable organization.

(E) In addition, respondent received cash payments from Spinka that were refunds or kickbacks that she remitted or delivered to other contributors. From 2003 through 2007, respondent received and remitted \$876,000 in kickbacks for contributions made by third-party contributors.

(F) For the tax years 2004 through 2006, respondent represented on tax returns that she made \$477,500 in purported charitable contributions to Spinka charitable organizations. She claimed the total amount of \$477,500 as charitable deductions and/or business promotion deductions on her individual tax returns and the corporate tax returns of Kyffin Pharmacy, Inc. The claimed deductions of \$477,500 were illegal deductions.

(G) For the tax year 2007, respondent did not claim any deductions on her individual tax return or the corporate tax return of Kyffin Pharmacy, Inc., for the contributions that she made to Spinka charitable organizations.

9. As set forth in the Plea Agreement, and as a matter of mitigation for sentencing purposes, respondent pleaded guilty prior to arraignment on the charges of the Indictment. Respondent had devoted time and labor to charitable institutions and cared for her elderly parents. She also suffered Post Traumatic Stress Syndrome as a result of having been arrested by federal authorities on the eve of her son's wedding. Prior to sentencing, respondent was also required under the Plea Agreement to file amended individual tax returns and amended corporate tax returns for Kyffin Pharmacy, Inc., for the tax years 2004 through 2006 to correct any improper tax deductions or credits.

10. On April 9, 2013, respondent surrendered to the custody of the Bureau of Prisons to begin her eight-month prison sentence at a federal camp facility in Connecticut. Respondent wanted to serve her prison sentence in Connecticut because her adult children live on the East Coast and could visit her in prison, and there were other Jewish inmates serving time in the camp facility. She had a difficult time while incarcerated in the prison camp; she lost 45 pounds due to the lack of kosher foods. Respondent was released from the federal camp facility in August 2013 after serving four months of her eight-month prison sentence.

11. After her release from prison, respondent began her two-year term of supervised community release or probation pursuant to the terms of her sentence. She lived in a half-way house for a few weeks before she returned to live in her own home. Thereafter, respondent began working as a pharmacist at Absolute Care Pharmacy. She is currently working at Premier Pharmacy. Both pharmacies are closed-door pharmacies.

12. Respondent will remain on supervised community release for her conviction until December 2015. She is in compliance with the terms of her probation. She has made payment of the court-ordered restitution of \$84,294 to the IRS. She has completed the 500 hours of community service by working in a food kitchen and delivering food.

13. As established by the testimony of Valerie Sakamura, Pharm.D., who is a registered pharmacist and an inspector for the Board, a registered or licensed pharmacist may work in a variety of settings, including a retail pharmacy, hospital pharmacy, privately-owned pharmacy, sterile compounding facility, and closed-door pharmacy. The duties of a pharmacist are outlined at California Code of Regulations, title 16, section 1793.1. In addition to reviewing and interpreting a prescription, consulting with the patient and prescriber, and supervising the packaging and dispensing of prescribed medications, a pharmacist is expected to understand and follow the laws and regulations governing a pharmacy and the documentation and maintenance of drugs. A pharmacist must be able to communicate with others, act as a patient advocate, and mentor and supervise other pharmacists, pharmacy technicians, and interns in a pharmacy setting. A pharmacist must be honest and have integrity and good judgment, for he or she has access to private health information of

patients and their medications, as well as access to controlled substances and dangerous drugs. Patients and the general public must be able to trust a pharmacist to maintain the confidentiality of private information, provide correct information on medications when consulted, and ensure the correct packaging and dispensing of medications and their dosages.

Respondent's Evidence

14. (A) Respondent submitted four letters from colleagues and references who are aware of the allegations in this matter. In a letter dated January 27, 2015, Kimberly Aksentijevic, Pharm.D., states that she has been colleagues with respondent for over 25 years and has found her to be a fine pharmacist who is dedicated to the elderly and disabled patients in long-term facilities served by her pharmacies. Aksentijevic writes that respondent is knowledgeable and has good customer service skills which enabled her to help grow the pharmacies where she has worked. Respondent was always available to the staff and administrators of the facilities and cared for her employees. Aksentijevic worked as a staff pharmacist at Kyffin Pharmacy, Inc., from 2002 through 2009.

(B) In her January 28, 2015 letter, Marina Gorenshtein, Pharm.D., writes that she has known respondent for over 20 years and worked with her at Kyffin Pharmacy, Inc. She states that respondent is a "workaholic" and has "an exceptional knowledge of pharmacy." Gorenshtein adds that respondent has built successful pharmacies and has always been focused on patient care and needs. Gorenshtein writes that respondent has good moral character and is devoted to her charitable causes and to helping people in need. Gorenshtein worked at Kyffin Pharmacy, Inc.

(C) Joan Takeuchi is an administrative assistant at a closed-door pharmacy. She has known respondent for over 25 years and worked with respondent in several closed-door pharmacies that served long-term care facilities. She used to work as an administrative assistant at Kyffin Pharmacy, Inc. Takeuchi writes that respondent is a caring and dedicated pharmacist whose priority is patient care and making decisions in the best interests of patients.

(D) Respondent submitted a letter from Rabbi Isaac Stralberg, the founder of CareLev, a community outreach organization. Rabbi Stralberg has known respondent for more than 10 years and has been her rabbi, spiritual advisor, and a family friend. The rabbi writes that, as a pharmacist, respondent treats all patients with dignity and compassion. She is a community activist who helps children from broken homes as well as the homebound and indigent. She converted the garage at her home into a small apartment to accommodate families who come to Los Angeles for medical treatment. Rabbi Stralberg states that respondent has a noble heart and grace and has chosen to be "a source of education and tolerance" and to follow a "life of service to others" while dealing with her recent difficulties.

15. (A) Respondent admits her conviction and crime and acknowledges that she committed wrongful acts. She attributes her conduct to bad judgment or an error in judgment. Respondent adds that she did not harm a patient and has never had a problem with her license. She believed that, when she was involved in the illegal tax scheme, she did not do anything wrong that would affect her pharmacist license. Respondent asserts that she has already been punished and suffered enough for her crime. She points out that she served her prison sentence and completed her community service. Her family relationships have been damaged; her father and sister were also convicted for their roles in the illegal tax scheme. Respondent wants the opportunity to continue her career as a pharmacist.

(B) Respondent further contends that she is rehabilitated. She testified that she continues to donate her time and money to charities and to needy people, although she did not submit any documentation of her current charitable activities. She asserted that she has had to re-examine and reflect on her past conduct. Respondent did not submit any letter or evaluation from a therapist or counselor that corroborates any change in her attitude or associations or explains her past conduct. Respondent did not submit any letter or evaluation from her present employer. She did demonstrate remorse for her crime.

16. Respondent is married. Her husband works as a bio-medical engineer. They have two adult children and two grandchildren.

17. Based on Findings 5 – 9 and 13 above, respondent's conviction for conspiracy is substantially related to the qualifications, functions, or duties of a registered pharmacist within the meaning of California Code of Regulations, title 16, section 1770. Her conviction involved dishonesty and evidences to a substantial degree a present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare

18. Based on Findings 1 – 16 above, it was not established that respondent violated or attempted to violate, assisted in or abetted the violation of, or conspired to violate any provision or regulation of the Pharmacy Law or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by any other state or federal regulatory agency. No evidence or argument was presented on this allegation.

19. The costs of investigation and enforcement incurred by the Board in this matter total \$10,842.50, as set forth in the Certification of Prosecution Costs. (Exh. 3.)

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's pharmacist license for unprofessional conduct pursuant to Business and Professions Code sections 4301, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that respondent was convicted of a crime, to wit: conspiracy, that is substantially related to the qualifications, functions, and duties of a licensed or registered pharmacist, based on Findings 2 – 3, 5 – 9, 13, and 17 above.

2. Grounds exist to revoke or suspend respondent's pharmacist license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (f), in that respondent committed acts involving moral turpitude, dishonesty, fraud, and deceit, based on Findings 2 – 3 and 5 – 9 above.

3. Grounds do not exist to revoke or suspend respondent's pharmacist license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (o), in that it was not established that respondent violated or attempted to violate, or assisted in or abetted the violation of, or conspired to violate, any provision or regulation of the Pharmacy Law, or applicable federal and state laws and regulations governing pharmacy, including regulations established by any other state or federal regulatory agency, based on Finding 18 above.

4. Grounds exist to direct respondent to pay the Board for the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3, in that respondent violated the Pharmacy Law, based on Conclusions of Law 1 – 2 above. The reasonable costs of investigation and enforcement of this matter are \$10,842.50, based on Finding 19 above.

5. Under Business and Professions Code section 4301, the Board shall take action against the holder of a license who is guilty of unprofessional conduct. Unprofessional conduct includes the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under the Pharmacy Law; and 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. (Bus. & Prof. Code, § 4301, subs. (f) and (l).)

Business and Professions Code section 490, subdivision (a), provides that, in addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications,

functions, or duties of the business or profession for which the license was issued. Section 490, subdivision (b), provides that, notwithstanding any other provisions of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

California Code of Regulations, title 16, section 1770, further provides that, for the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Business and Professions Code section 475), 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 or her license or registration in a manner consistent with the public health, safety, or welfare.

6. In *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, the Court of Appeal, Second Appellate District, held that, in a proceeding to discipline a professional license for an act or omission, there is a constitutional requirement of a nexus between the act or omission and a licensee's fitness or competence to practice his or her profession, citing *Newland v. Board of Governors* (1977) 19 Cal.3d 705, 711. The *Windham* court held that there was a nexus between a physician's crime of tax evasion and his licensed activity of the practice of medicine because the crime of tax evasion involved dishonesty in the physician's dealings with government, and practicing physicians in general must deal with insurers and patients on a basis that requires honesty in reporting as well as trust and confidence in the doctor's honesty and integrity. The court reiterated its finding from *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305, that intentional dishonesty demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine. The *Windham* court concluded that, because the physician's crime of tax evasion involved dishonesty, there was a nexus and a substantial relationship between the crime and his qualifications to practice medicine.

7. Substantial Relationship—In the present matter, respondent concedes that "tax evasion" is an act of moral turpitude or dishonesty but contends that her crime is not substantially related to the qualifications, functions, and duties of a licensed pharmacist because there is no link or nexus between her crime and the practice of pharmacy. Respondent argues that her guilty plea or conviction does not evidence a present or potential unfitness to practice pharmacy in a manner consistent with the public health, safety, or welfare because she has already served her sentence. Respondent further asserts that there is no evidence to show how her conviction would affect her practice of pharmacy.

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Respondent's argument is not persuasive. In November 2012, she was convicted of conspiracy to defraud the federal government by the filing of false and incorrect tax returns with the IRS for three tax years, 2004 through 2006. In personal and corporate tax returns, respondent claimed deductions and business expenses for false and fraudulent charitable contributions that were largely remitted or returned to her by the charitable organizations. The false and fraudulent tax deductions and expenses had the effect of reducing respondent's personal tax liability and the corporate tax liability of Kyffin Pharmacy, Inc. As the president and majority shareholder of Kyffin Pharmacy, Inc., she received a benefit from the reduced tax liabilities of her company. Respondent's conviction was therefore for a crime that involved dishonesty and deceit in the preparation of tax returns and in the reporting of her personal and her company's tax liabilities to the IRS.

As established by the testimony of the Board's inspector, honesty and integrity are essential qualifications for a licensed pharmacist. A pharmacist has access to private information of patients and their medications and must keep that information confidential. A pharmacist is required to complete or maintain records of drugs, including controlled substances, and must be honest and scrupulous in his or her record-keeping duties. Patients must be able to rely on and trust a pharmacist to fill their prescriptions correctly and to give them correct information about their medications during consultations. A pharmacist has to be able to supervise other pharmacists, pharmacy technicians, and students and ensure that medications are ordered, maintained, packaged, and dispensed correctly. Because her crime of conspiracy involved dishonesty and deceit, respondent's conviction was for crime substantially related to the qualifications, functions, and duties of a licensed pharmacist.

Moreover, contrary to respondent's assertion, there was a direct connection between her crime and the practice of pharmacy. As president of Kyffin Pharmacy, Inc., respondent was not engaged in the regular duties of a pharmacist, as outlined in California Code of Regulations, title 16, section 1793.1. Rather, respondent was responsible for managing and overseeing the business of the pharmacy company. She dealt with clients, such as nursing homes, which bought medications from her company, and wholesale pharmaceutical companies, which supplied medications and products to the company. She reviewed patient charts. As reflected in the facts and circumstances of her conviction for conspiracy, respondent was also responsible for obtaining tax information and documents and filing the corporate tax returns of Kyffin Pharmacy, Inc. In this regard, respondent entangled the pharmacy company in the conspiracy to defraud the IRS. She wrote checks to the charitable organizations on the company's bank account. She then claimed that these fraudulent charitable contributions were business and promotional expenses of the company, and then claimed business and promotional expense deductions for these charitable contributions on the company's corporate tax returns. By her own actions, respondent created a direct nexus between her crime and Kyffin Pharmacy, Inc.,

which employed pharmacists and pharmacy technicians, and was engaged in the business and practice of a closed-door pharmacy.

Based on the foregoing, the clear and convincing weight of the evidence in this matter showed that respondent's conviction for conspiracy involved both dishonesty and the use of her pharmacy company for her own personal and financial ends. Her crime thus evidences to a substantial degree a present or potential unfitness to perform the functions of a licensed pharmacist in a manner consistent with the public health, safety, or welfare. Respondent's crime is therefore substantially related to the qualifications, functions, and duties of a licensed pharmacist within the meaning of California Code of Regulations, title 16, section 1770, and subjects respondent to discipline under Business and Professions Code section 4301, subdivision (l), and section 490, as well as under Business and Professions Code section 4301, subdivision (f).

8. Under the Board's Disciplinary Guidelines (Rev. 10/2007), the maximum penalty for a pharmacist who has committed unprofessional conduct under Business and Professions Code section 4301, subdivisions (a) – (h), (j), and (l) – (q), is revocation. The minimum penalty is revocation with revocation stayed and three years of probation with standard terms and conditions of probation and optional conditions as appropriate.

When considering whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the Disciplinary Guidelines require consideration of the following factors: actual or potential harm to the public or to any consumer; prior disciplinary record or prior warnings; number and/or variety of current violations; number and severity of the acts, offenses, or crimes under consideration; aggravating and mitigating evidence; compliance with terms of any criminal sentence, parole, or probation; overall criminal record; if applicable, evidence of proceedings being set aside and dismissed pursuant to Penal Code section 1203.4; time passed since the acts or offenses; whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, respondent had knowledge of or knowingly participated in such conduct; and financial benefit to respondent from the misconduct. No single factor or combination of these factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate penalty.

The Disciplinary Guidelines further provide that a licensee is permitted to present mitigating circumstances at a hearing and has the burden of demonstrating any rehabilitative or corrective measures that he or she has taken. The following are examples of appropriate evidence that a licensee may submit to demonstrate his or her rehabilitative efforts and competency: written statements and/or performance evaluations; letters from counselors regarding the licensee's participation in a rehabilitation or recovery program; letters describing the licensee's participation in support groups; laboratory analyses or drug screen reports; physical examination or

assessment report by a licensed physician confirming the absence of any physical impairment that would prohibit the licensee from practicing safely; and letters from probation or parole officers regarding the licensee's participation in and/or compliance with the terms and conditions of probation or parole.

9. Here, the evidence demonstrated that respondent has no prior criminal record. It has been approximately nine years since she filed her last false and fraudulent tax return with the IRS. She completed her prison sentence, paid the restitution, and completed the community service, as ordered by the court as part of her sentence. Respondent, however, remains on supervised community release for her federal conviction until December 2015, and has not had her conviction set aside or dismissed.

While she has no prior disciplinary record on her individual pharmacist license, respondent's closed-door pharmacy, Kyffin Pharmacy, Inc., for which she was president and majority shareholder, surrendered its pharmacy permit in a disciplinary action six years ago in November 2009. With respect to her crime of conspiracy, there were aggravating circumstances. The public suffered harm and respondent benefited from her crime inasmuch as the IRS did not receive, and respondent and her company avoided paying, the correct amount of federal taxes by reason of respondent's false and incorrect tax returns. Her crime was knowing and intentional in that she conspired with members of her family and faith to defraud and deceive the federal government. There were large amounts of money involved in her crime. She claimed \$477,500 in illegal deductions on tax returns and received refunds or kickbacks of \$876,000 that she remitted to other participants in the illegal scheme. Respondent participated in the conspiracy and filed false and incorrect tax returns for three tax years from 2004 through 2006.

Finally, it was not established by the clear and convincing weight of the evidence that respondent is rehabilitated from her conviction. Respondent presented little evidence of her rehabilitation. She did not present any letter from her probation officer regarding her compliance with the terms of her supervised community release or from a therapist or counselor explaining respondent's criminal conduct, any changes in her outlook or attitude, or her prospects for the future. Since being discharged from prison camp, respondent has been working as a pharmacist for a couple of closed-door pharmacies but she did not present any letters from her employers or supervisors regarding her job performance or compliance with company policies and the Pharmacy Law and regulations.

The concern in this matter is that, coupled with the lack of evidence of her rehabilitation, respondent did not show that she truly understands the seriousness of her crime. Because no patients were harmed by her crime, respondent asserted that she did not think she did anything that would affect her pharmacist license. Her decision to involve Kyffin Pharmacy, Inc., a pharmacy that held a permit issued by the Board, in the tax conspiracy reflected adversely on her professional judgment and

fitness to be a Board licensee, for it demonstrated a willingness not only to disobey the law but also to use a pharmacy business for illegal purposes for personal gain. (See Cal. Code Regs., tit. 16, § 1793.1, subd. (g).) Public health, safety, and welfare require the revocation of respondent's pharmacist license.

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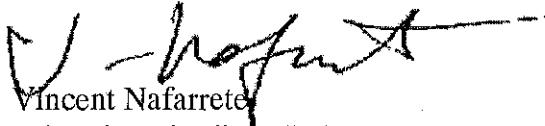
WHEREFORE, the following Order is hereby made:

ORDER

1. Registered pharmacist license number RPH 41239 and license rights previously issued by the Board of Pharmacy to respondent Mira J. Zeffren are revoked, based on Conclusions of Law 1 – 2 and 5 – 9 above, jointly and for all.

2. Respondent Mira J. Zeffren shall also pay the Board of Pharmacy for the reasonable costs of investigation and enforcement of this matter in the sum of \$10,842.50, based on Conclusions of Law 4 above.

Dated: July 31, 2015


Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
Supervising Deputy Attorney General
3 MICHAEL A. CACCIOTTI
Deputy Attorney General
4 State Bar No. 129533
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2932
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the First Amended Accusation
Against:

Case No. 5070

FIRST AMENDED ACCUSATION

12 **MIRA J. ZEFFREN**
13 211 South Alta Vista Blvd.
Los Angeles, CA 90036

14 Pharmacist License No. RPH 41239

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about September 26, 1987, the Board issued Pharmacist License No. RPH
24 41239 to Mira J. Zeffren (Respondent). The Pharmacist License was in full force and effect at all
25 times relevant to the charges brought herein and will expire on December 31, 2016, unless
26 renewed.

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1 JURISDICTION

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

5 STATUTORY PROVISION

6 4. Section 490 of the Code states:

7 "(a) In addition to any other action that a board is permitted to take against a licensee, a
8 board may suspend or revoke a license on the ground that the licensee has been convicted of a
9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
10 or profession for which the license was issued.

11 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
12 discipline a licensee for conviction of a crime that is independent of the authority granted under
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
14 of the business or profession for which the licensee's license was issued.

15 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
16 conviction following a plea of nolo contendere. Any action that a board is permitted to take
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
19 made suspending the imposition of sentence, irrespective of a subsequent order under the
20 provisions of Section 1203.4 of the Penal Code.

21 5. Section 4300 of the Code provides, in pertinent part, that every license issued by the
22 Board is subject to discipline, including suspension or revocation.

23 6. Section 4300.1 of the Code states:

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

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

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

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1 months in Federal Prison, and placed her on supervised release for a term of 2 years, with terms
2 and conditions.

3 b. The circumstances surrounding the conviction are that beginning on an unknown date
4 and continuing to on or about December 19, 2007, Respondent conspired to defraud the Internal
5 Revenue Service (IRS) by fraudulently claiming full amounts of nominal charitable contributions
6 to the Spinka charitable organization as tax deductions, while having actually contributed as little
7 as 5 to 10 percent of the amounts of the claimed deductions.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

10 11. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
11 Code, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit
12 with the intent to substantially benefit or substantially injure another. Complainant refers to and
13 by reference incorporates, the allegations set forth above in paragraph 10, as though set forth
14 fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

17 12. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
18 that Respondent committed acts of unprofessional conduct and / or violated provision of the
19 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
20 forth above in paragraphs 10-11, as though set forth fully.

21 **DISCIPLINE CONSIDERATIONS**

22 13. To determine the degree of discipline, Complainant alleges that:

23 a. On or about October 26, 2009, in a prior disciplinary action entitled *In the Matter of*
24 *the First Amended Accusation Against Kyffin Pharmacy, Inc., Mira Zeffren, President dba Kyffin*
25 *Pharmacy* Case No. 3161, before the California Board of Pharmacy, Kyffin Pharmacy Inc.'s
26 Original Pharmacy Permit No. PHY46023 was surrendered, effective November 25, 2009.
27 Kyffin Pharmacy was a large, closed door pharmacy operation, having about 70-75 employees,
28 serving a large patient population (estimated 5000 beds) of mostly elderly residents in 50 assisted

1 living and skilled nursing facilities or similar facilities in Los Angeles, Ventura and Orange
2 counties. The First Amended Accusation alleged the following violations against Kyffin
3 Pharmacy Inc.:

4 1. Unprofessional conduct under section 4301(j) and (o) in conjunction with section 4342
5 and Health and Safety code section 111255 for the Sale of Contaminated or Nonconforming
6 Pharmaceuticals.

7 2. Unprofessional conduct under section 4301(j) and (o) and section 4076(a)(7) for
8 dispensing incorrectly labeled prescription bottles.

9 3. Unprofessional conduct under section 4301(j) and (o) in conjunction with section 4342
10 and Health and Safety code section 111255 for gross negligence.

11 4. Unprofessional conduct under section 4301(m) for entering into a cash compromise of a
12 charge in violations of the Welfare and Institutions Code related to the Medi-Cal program in two
13 separate instances, in 2007-2008, 2009.

14 5. Unprofessional conduct under section 4301(j) and (o), in conjunction with 22 California
15 Code of Regulations section 72371(c)(1) and 72371(d)(1), prohibiting the return of Schedule IV
16 controlled substances to the issuing pharmacy.

17 6. Unprofessional conduct under section 4301(j) and (o), in conjunction with section 4081
18 (a), section 4333 and 16 California Code of Regulations section 1718 for failure to maintain
19 complete and current inventory records related to drug inventories and distribution.

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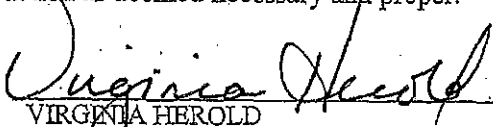
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PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 41239, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/13/15 

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

LA2014510887