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

In the Matter of the Accusation Against: **WALGREENS #04517** 2600 Mowry Avenue Fremont, CA 94538 **Pharmacy Permit No. PHY 53062** and **WALGREENS #00900** 2105 Morrill Avenue San Jose, CA 95132 **Pharmacy Permit No. PHY 52768** and **WALGREENS #05480** 1833 N. Milpitas Boulevard Milpitas, CA 95035 **Pharmacy Permit No. PHY 52864** and **KIM THIEN LE aka KIM T. LE** 1133 Park Glen Court Milpitas, CA 95035 **Pharmacy Technician License No. TCH 36481** Respondents.	Case No. 6325

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Reproval 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 July 25, 2019.

It is so ORDERED on June 25, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Victor Law, R.Ph.
Board President

XAVIER BECERRA
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General
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Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
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In the Matter of the Accusation Against: **WALGREENS #04517** **2600 Mowry Avenue** **Fremont, CA 94538** **Pharmacy License No. PHY 53062** **and** **WALGREENS #00900** **2105 Morrill Avenue** **San Jose, CA 95132** **Pharmacy License No. PHY 52768** **and** **WALGREENS #05480** **1833 N. Milpitas Boulevard** **Milpitas, CA 95035** **Pharmacy License No. PHY 52864** **and** **KIM THIEN LE aka KIM T. LE** **1133 Park Glen Court** **Milpitas, CA 95035** **Pharmacy Technician License No. TCH 36481** Respondents.	Case No. 6325 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER FOR PUBLIC REPROVAL** **[Bus. & Prof. Code § 495]** **<u>ONLY AS TO RESPONDENTS</u>:** **WALGREENS #04517** **WALGREENS #00900** **WALGREENS #05480**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and responsibilities of the Board of Pharmacy, Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order for Public Reproval to be submitted to the Board for approval and adoption as the final disposition of the Accusation solely with respect to Respondents Walgreens #04517, Walgreens #00900, and Walgreens #05480. It does not apply to Respondent Kim Thien Le aka Kim T. Le.

PARTIES

1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of Pharmacy (Board). She continued this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Joshua A. Room, Supervising Deputy Attorney General.

2. Respondents Walgreens #04517, Walgreens #00900, and Walgreens #05480 (Walgreens Respondents) are represented in this proceeding by attorney Malcolm Segal, whose address is Segal & Associates, PC, 400 Capitol Mall, Suite 2550, Sacramento, CA 95814.

JURISDICTION

3. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License Number PHY 53062 to Walgreens Co. dba Walgreens #04517 (Respondent Walgreens #04517). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2019, unless renewed.

4. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License Number PHY 52768 to Walgreens Co. dba Walgreens #00900 (Respondent Walgreens #00900). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2019, unless renewed.

5. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License Number PHY 52864 to Walgreens Co. dba Walgreens #05480 (Respondent Walgreens #05480). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2019, unless renewed.

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6. Accusation No. 6325 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs and is currently pending against the Walgreens Respondent. The Accusation and all other statutorily required documents were properly served on the Walgreens Respondents on October 23, 2018. The Walgreens Respondents timely filed Notices of Defense. A copy of Accusation No. 6325 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. The Walgreens Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 6325. The Walgreens Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

8. The Walgreens Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalfs; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. The Walgreens Respondents voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. The Walgreens Respondents admit the truth of each and every charge and allegation in Accusation No. 6325. Respondent Walgreens #04517, Respondent Walgreens #00900, and Respondent Walgreens #05480 each agree that its Pharmacy License is subject to discipline and each agrees to be bound by the Disciplinary Order below.

RESERVATION

11. The admissions made by the Walgreens Respondents herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Pharmacy. The Walgreens Respondents understand and agree that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by the Walgreens Respondents or their counsel. By signing the stipulation, the Walgreens Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Reproval shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reproval, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order for Public Reproval is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This stpulation may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy License No. PHY 53062, issued to Respondent Walgreens #04517, Pharmacy License No. PHY 52768, issued to Respondent Walgreens #00900, and Pharmacy License No. PHY 52864, issued to Respondent Walgreens #05480, shall be publicly reproved by the Board of Pharmacy under Business and Professions Code section 495 in resolution of Accusation No. 6325, attached hereto as exhibit A.

IT IS FURTHER HEREBY ORDERED that the Walgreens Respondents shall be jointly and severally liable for making the following payments and taking the following actions. Any failure to timely meet these requirements shall be considered unprofessional conduct and shall subject each of the Walgreens Respondents to further license discipline.

Cost Recovery. The Walgreens Respondents shall pay $19,500.00 to the Board for its costs associated with the investigation and enforcement of this matter. Full payment shall be made within sixty (60) days of the effective date of this decision. If the Board costs are not paid in full within sixty (60) days, none of the Walgreens Respondents shall be permitted to renew its Pharmacy License until these costs are paid in full.

Civil Penalty. The Walgreens Respondents shall pay to the Board a civil penalty of $335,000.00. Full payment shall be made within sixty (60) days of the effective date of this decision. If the civil penalty is not paid in full within sixty (60) days, none of the Walgreens Respondents shall be permitted to renew its Pharmacy License until these costs are paid in full.

Respondents understand and agree that this civil penalty is an administrative fine pursuant to 11 U.S.C. § 523(a)(7), and as such is not dischargeable in bankruptcy.

Licensure Documentation. The Walgreens Respondents shall ensure that, within ninety (90) days of the effective date of this decision, the corporate Walgreens Company that operates the Walgreens Respondents, (1) reports to the Board a list of all licensed pharmacists employed in any Walgreens Company location or facility that is either located in California or provides any services to California patients, and (2) provides copies of the original license certificates for all of the licensed pharmacists on the aforementioned list.

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ACCEPTANCE

I am authorized to sign on behalf of and bind Respondent Walgreens #04517 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with attorney Malcolm Segal. I understand the stipulation and the effect it will have on Walgreens #05480's Pharmacy License. I enter into this stipulation voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 5/8/2019

Rina Shah, Pharm.D., Vice President, Pharmacy Operations and Specialty, Walgreens Company, for WALGREENS #04517
Respondent

I am authorized to sign on behalf of and bind Respondent Walgreens #00900. I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with attorney Malcolm Segal. I understand the stipulation and the effect it will have on Walgreens #05480's Pharmacy License. I enter into this stipulation voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 5/8/2019

Rina Shah, Pharm.D., Vice President, Pharmacy Operations and Specialty, Walgreens Company, for WALGREENS #00900
Respondent

I am authorized to sign on behalf of and bind Respondent Walgreens #05480. I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with attorney Malcolm Segal. I understand the stipulation and the effect it will have on Walgreens #05480's Pharmacy License. I enter into this stipulation voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 5/8/2019

Rina Shah, Pharm.D., Vice President, Pharmacy Operations and Specialty, Walgreens Company, for WALGREENS #05480
Respondent

I have read and fully discussed with the Walgreens Respondents the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reproval. I approve its form and content.

DATED: 5/9/19

MALCOLM SEGAL
Segal & Associates, PC
Attorneys for Walgreens Respondents

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 5/17/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General

JOSHUA A. ROOM
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6325

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Complainant alleges:

PARTIES

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

2. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License Number PHY 53062 to Walgreens Co. dba Walgreens #04517 (Respondent Walgreens #04517). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2018, unless renewed.

3. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License Number PHY 52768 to Walgreens Co. dba Walgreens #00900 (Respondent Walgreens #00900). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2018, unless renewed.

4. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License Number PHY 52864 to Walgreens Co. dba Walgreens #05480 (Respondent Walgreens #05480). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2018, unless renewed.

5. On or about February 15, 2001, the Board of Pharmacy issued Pharmacy Technician License Number TCH 36481 to Kim Thien Le aka Kim T. Le (Respondent Le). The Pharmacy Technician License expired on October 31, 2008, and was subsequently cancelled.

JURISDICTION

6. This Accusation is brought before the Board under the authority of the following laws. All statutory references are to the Business and Professions Code (Code), unless indicated.

7. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

8. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

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9. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

10. Section 4021 of the Code provides that a "controlled substance" means any substance listed in Chapter 2 (Section 11053 et seq.) of Division 10 of the Health and Safety Code.

11. Section 4022 of the Code states:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

12. Section 4036 of the Code states:

"'Pharmacist' means a natural person to whom a license has been issued by the board, under Section 4200, except as specifically provided otherwise in this chapter. The holder of an unexpired and active pharmacist license issued by the board is entitled to practice pharmacy as defined by this chapter, within or outside of a licensed pharmacy as authorized by this chapter."

13. Section 4051 of the Code states, in pertinent part:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter. . . ."

14. Section 4081 of the Code states, in pertinent part:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. . . .

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section."

15. Section 4105 of the Code states, in pertinent part:

"(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form. . . .

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, [or] the pharmacist on duty if the pharmacist-in-charge is not on duty, . . . shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically. . . ."

16. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any licensee guilty of "unprofessional conduct," defined to include, but not be limited to:

(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.

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

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy . . . .

17. Section 4328 of the Code provides that it is unlawful for any person to permit the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs, in his or her pharmacy, except by a pharmacist.

18. Section 4330 of the Code provides, in pertinent part, that it is unlawful for any person who has obtained a license to conduct a pharmacy: to fail to place in charge of the pharmacy a pharmacist; to permit the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs, except by a pharmacist; or to commit any act that would subvert or tend to subvert the efforts of the pharmacist-in-charge to comply with laws governing the pharmacy.

19. Section 4332 of the Code makes it unlawful for any person: to fail, neglect, or refuse to maintain the records required by Section 4081; or, when called upon by an authorized officer or a member of the board, to fail, neglect, or refuse to produce or provide the records within a reasonable time; or to willfully produce or furnish records that are false.

20. Section 4333 of the Code provides, in pertinent part, that all prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

21. Health and Safety Code section 11152 provides that no person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division.

22. Health and Safety Code section 11158 states, in pertinent part:

"(a) Except as provided in Section 11159 [order for controlled substances for use by a patient in a county or licensed hospital] or in subdivision (b) of this section [prescriber dispensing of 72-hour supply of Schedule II controlled substance], no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter."

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23. Health and Safety Code section 11162.1, subdivision (a), provides, in pertinent part, that prescription forms for controlled substances shall be printed with:

(1) A latent, repetitive "void" pattern; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7)(A) Six quantity check off boxes so that the prescriber may indicate the quantity by checking the applicable box where the following quantities shall appear:

1-24

25-49

50-74

75-100

101-150

151 and over.

(B) In conjunction with the quantity boxes, a space to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) A statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number, and address of the prescribing practitioner.

(10) Check boxes so that the prescriber may indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

(13) A number assigned to the approved security printer by the Department of Justice.

(14)(A) A check box by the name of each prescriber when a form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by his or her name.

Health and Safety Code section 11162.1, subdivision (b), further provides that each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

24. Health and Safety Code section 11164 states, in pertinent part:

"Except as provided in Section 11167 [emergency], no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the [patient name]; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the [pharmacy] shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(b)(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription."

REGULATORY PROVISIONS

25. California Code of Regulations, title 16, section 1717, subdivision (b) requires, in pertinent part, that for each prescription on file, certain information shall be maintained and be readily retrievable in the pharmacy, including the date dispensed, and the name or initials of the dispensing pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be initialed by the supervising pharmacist before they are dispensed.

26. 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.

COST RECOVERY

27. Section 125.3 of the Code provides, in pertinent part, that 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 its reasonable costs of investigation and enforcement.

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FACTUAL BACKGROUND

28. On or about August 8, 2017, during and subsequent to an inspection at Respondent Walgreens #04517, it was discovered that the pharmacy had dispensed prescriptions pursuant to controlled substance prescription forms that did not meet statutory requirements. These included:

- **RX 2895220 (alprazolam 2mg**; patient MK)[1]: lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription document.
- **RX 2895879 (alprazolam 2mg**; patient HC): lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription document.
- **RX 2935775 (alprazolam 2mg**; patient MC): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to approved security printer by Department of Justice; and lacked lot and batch numbers printed on prescription.
- **RX 2941746 (alprazolam 2mg**; patient EC): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3012053 (alprazolam 2mg**; patient LG): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.

[1] Patient initials are used throughout to protect confidentiality.

- **RX 3021321 (alprazolam 2mg**; patient HC): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3023970 (promethazine with codeine 10 mg/6.25mg per 5 ml**; patient HC): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3036290 (alprazolam 2mg**; patient LC): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3106606 (alprazolam 2mg**; patient HC): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3107433 (alprazolam 2mg**; patient SC): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.

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- **RX 3139666 (alprazolam 2mg**; patient HJ): lacked latent, repetitive "void" pattern printed across the entire front of the prescription document; lacked "California Security Prescription" watermark; lacked check boxes to indicate number of refills.

29. During and subsequent to this inspection, neither the pharmacist on duty nor the pharmacist-in-charge were able to locate the original prescription document for **RX 3012053.**

30. During and subsequent to this inspection, inquiry into the pharmacists responsible for verifying and dispensing the controlled substance prescriptions at issue revealed that the initials KTL were listed as the verifying pharmacist for some of these prescriptions. Those initials were said to correspond to a Kim T. Le, then employed by Walgreens as a pharmacist and pharmacist-in-charge at Respondent Walgreens #00900, who had done remote electronic verification. This individual will hereafter be known as Kim Thien Le aka Kim T. Le (Respondent Le).

31. The Pharmacist License Number listed in Walgreens records for Respondent Le (RPH 58654) was subsequently identified as belonging to another licensed pharmacist with a similar name, who was not employed by Walgreens. When Respondent Le was confronted with this information, she claimed to be the holder of another Pharmacist License Number (RPH 52262). However, RPH 52262 was also determined to belong to another licensed pharmacist with a similar name, and not to Respondent Le. Subsequent investigation discovered that Respondent Le had previously been licensed as a Pharmacy Technician (TCH 36481), but that license had expired in 2008. Respondent Le had never been licensed as a Pharmacist.

32. Subsequent inquiry to Walgreens discovered that Respondent Le had also previously been a pharmacist and the pharmacist-in-charge at Respondent Walgreens #05480.

33. During a subsequent interview with Respondent Le, conducted shortly after the birth of her child, when she was confronted with the fact that the two license numbers she had claimed as her own belonged to other people, Respondent Le said "me and my son would be very grateful if you could just forget about this," "I will pay whatever fine," and promised she would "not be coming back to work as a pharmacist." When asked whether she was a licensed pharmacist, Respondent Le said yes, and said she had received a pharmacy degree from Creighton University in Nebraska. But she continued to avoid the question of what was her valid license number.

34. Subsequent inquiry to Creighton University revealed an entry in their files matching Respondent Le's name and date of birth, but showing no undergraduate or graduate degree was awarded. The entry in their files could simply have been the result of an inquiry by her, and did not necessarily indicate enrollment or matriculation. A subsequent inquiry to the agency that licenses pharmacists in Nebraska did not discover any licenses issued to Respondent Le.

35. Interviews with staff at Respondent Walgreens #00900 confirmed that Respondent Le had been observed undertaking tasks reserved to licensed pharmacists, including:

- Performing activities that required the exercise of professional judgment;
- Reducing oral and/or electronic prescriptions to writing;
- Verifying non-controlled and controlled substance prescriptions;
- Counseling patients regarding their prescriptions;
- Administering immunizations/vaccinations to patients;
- Supervising clerks, pharmacy technicians, intern pharmacists, and trainees;
- Ordering non-controlled and controlled medications; and
- Signing for delivered medications.

36. Subsequent inquiry to Walgreens discovered that Respondent Le had worked for Walgreens in one capacity or another since September 20, 1999. Her employment history was:

- September 1999 – March 2001: Pharmacy Cashier
- March 2001 – July 2001: Pharmacy Technician
- July 2001 – November 2006: Intern Pharmacist
- November 2006 – date of report: Pharmacist
- April 2016 – date of report: Pharmacy Manager (pharmacist-in-charge [PIC])
    - April 2016 – November 2016: PIC at Respondent Walgreens #05480
    - November 2016 – date of report: PIC at Respondent Walgreens #00900

37. The Pharmacist License Number listed in Walgreens records was the first number identified in paragraph 31, above (RPH 58654), which belonged to another licensed pharmacist that was not employed by Walgreens.

38. Board records show no intern or pharmacist license(s) issued to Respondent Le.

39. Walgreens did not have or keep any proof of Respondent Le's enrollment in or graduation from an accredited pharmacy school, nor did Walgreens have or keep copies of any of Respondent Le's purported licenses. Walgreens could not say whether or not Respondent Le's Pharmacy Technician, (purported) Intern Pharmacist, or (purported) Pharmacist licensure papers were requested or reviewed prior to hiring. Walgreens was also not able to locate a copy of any application for employment completed by Respondent Le.

40. During the investigation, Walgreens provided documentation demonstrating that Respondent Le had, during her tenure as a pharmacist with Walgreens, "performed one of the pharmacist required steps, i.e., data entry review, drug utilization review, or product verification," between November 1, 2006 and September 30, 2017, for a total of 745,355 prescriptions in a total of 395 Walgreens pharmacies (many by remote), 100,701 of those for controlled substances. The greatest number of verifications had been performed in or for Respondent Walgreens #04517.

CAUSES FOR DISCIPLINE AS TO RESPONDENT LE

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

41. Respondent Le is subject to discipline under section 4301, subdivision (f) of the Code, in that Respondent, as described in paragraphs 30 to 40 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, when she posed as an intern pharmacist and pharmacist, accepted employment in those capacities, and acted as a pharmacist-in-charge, all without having the appropriate licensure to perform the necessary tasks.

SECOND CAUSE FOR DISCIPLINE

(Unlicensed Practice as Intern Pharmacist and Pharmacist)

42. Respondent Le is subject to discipline under section 4301, subdivision(s) (j) and/or (o), and/or section(s) 4036 and/or 4051 of the Code, in that Respondent, as described in paragraphs 30 to 40 above, performed tasks reserved to an intern pharmacist or pharmacist, in California, without appropriate licensure from the Board to permit those tasks.

CAUSES FOR DISCIPLINE AS TO WALGREENS RESPONDENTS

THIRD CAUSE FOR DISCIPLINE

(Permitting Unlicensed Person to Act as Intern Pharmacist or Pharmacist)

43. Respondents Walgreens #04517, Walgreens #00900, and Walgreens #05480 are each and severally subject to discipline under section 4301, subdivision(s) (j) and/or (o), and/or section(s) 4328 and/or 4330 of the Code, in that Respondents, as described in paragraphs 30 to 40 above, permitted the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs, by Respondent Le, who was not then licensed as an intern pharmacist or pharmacist.

FOURTH CAUSE FOR DISCIPLINE

(Failing to Place Pharmacist in Charge of Pharmacy)

44. Respondents Walgreens #00900 and Walgreens #05480 are each and severally subject to discipline under section 4301, subdivision(s) (j) and/or (o), and/or section 4330 of the Code, in that Respondents, as described in paragraphs 30 to 40 above, failed to place a licensed pharmacist in charge of the pharmacy while Respondent Le served as pharmacist-in-charge.

FIFTH CAUSE FOR DISCIPLINE

(Dispensing Pursuant to Non-Compliant Prescriptions)

45. Respondent Walgreens #04517 is subject to discipline under section 4301, subdivision(s) (j) and/or (o), and/or Health and Safety Code section(s) 11152, 11158, 11162.1, and/or 11164, in that Respondent, as described in paragraph 28 above, dispensed prescriptions pursuant to controlled substance prescription forms that did not meet statutory requirements.

SIXTH CAUSE FOR DISCIPLINE

(Failing to Provide Records)

46. Respondent Walgreens #04517 is subject to discipline under section 4301, subdivision(s) (j) and/or (o), and/or section(s) 4081, 4105, 4332, and/or 4333 of the Code, in that, as described in paragraph 29 above, neither the pharmacist on duty nor the pharmacist-in-charge was able to retrieve or produce the original prescription document pertaining to **RX 3012053**.

/ / /

SEVENTH CAUSE FOR DISCIPLINE

(Lack of Documentation of Pharmacist Verification)

47. Respondent Walgreens #04517 is subject to discipline under section 4301, subdivision(s) (j) and/or (o), and/or California Code of Regulations, title 16, section 1717, in that, as described in paragraphs 30 to 40 above, verifications on prescriptions were performed by an individual not holding a pharmacist license, so that no proper pharmacist was identified.

PRAYER

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

1. Revoking or suspending Pharmacy License Number PHY 53062, issued to Walgreens Co. dba Walgreens #04517 (Respondent Walgreens #04517);

2. Revoking or suspending Pharmacy License Number PHY 52768, issued to Walgreens Co. dba Walgreens #00900 (Respondent Walgreens #00900);

3. Revoking or suspending Pharmacy License Number PHY 52864, issued to Walgreens Co. dba Walgreens #05480 (Respondent Walgreens #05480);

4. Revoking or suspending Pharmacy Technician License Number TCH 36481, issued to Kim Thien Le aka Kim T. Le (Respondent Le);

5. Ordering Respondents to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

6. Taking such other and further action as is deemed necessary and proper.

DATED: 10/11/18

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

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