

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

In the Matter of the Accusation Against:

CUONG KIM TRAN, Respondent

Pharmacist License No. RPH 63317

Case No. 6419

OAH No. 2019070466

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 March 19, 2020.

It is so ORDERED on February 18, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name and title.

By

Greg Lippe
Board President

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Respondent.

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PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 3, 2019, in Los Angeles, CA.

Mario Cuahutle, Deputy Attorney General, appeared on behalf of Anne Sodergren, Interim Executive Officer (Complainant), Board of Pharmacy (the Board).

Negin Yamini, Attorney at Law, appeared on behalf of Cuong Kim Tran (respondent), who was present.

Complainant requested respondent's license be disciplined based upon her services on behalf of an individual engaged in prostitution. The court placed

respondent on informal diversion with terms and conditions which she satisfied. After she completed diversion, the court approved an amendment to the criminal complaint and based upon the respondent's plea of nolo contendere, convicted her of disturbing the peace, a misdemeanor. Respondent maintains that her conduct was not substantially related to her work as a pharmacist and the Accusation should be dismissed. In the alternative, respondent requests a term of probation. Based upon the evidence, the public will be adequately protected by the imposition of a three-year period of probation with terms and conditions.

Oral and documentary evidence was received. The record was held open until December 10, 2019, to allow respondent to submit the court docket, which was timely submitted and marked and admitted as Exhibit F. The record was closed and the matter was submitted for decision on December 10, 2019.

FACTUAL FINDINGS

Jurisdictional Matters and Background

1. On May 9, 2019, complainant served the Accusation on respondent. Respondent timely filed a Notice of Defense and this matter proceeded to hearing. (Ex. 1.)

2. On October 22, 2009, the Board issued Pharmacist License Number RPH 63317 (the License) to respondent to practice pharmacy in the State of California. The License has been in full force and effect during all times relevant to the Accusation, and remains in full force and effect, if not otherwise revoked or surrendered, until February 28, 2021. (Ex. 2.)

Criminal Conduct

3. On June 14, 2018, respondent pleaded nolo contendere and was found guilty, in the Superior Court of California, Los Angeles County, Case No. 8AR00615, on two misdemeanor counts, Penal Code section 653.23, subdivision (a)(1) (supervising, recruiting or aiding the commission of prostitution). The court did not convict respondent, but instead placed her on Informal Diversion for a period of 12 months on terms and conditions including performing 30 days of community labor with credit for two days, and staying away from the location of the crimes.

4. Respondent complied with the terms of the court-ordered Informal Diversion. On June 14, 2019, on the People's motion and on respondent's plea of nolo contendere, the Court interlineated the criminal complaint to add count three, violation of Penal Code 415 (disturbance of the peace), a misdemeanor, found respondent guilty and convicted respondent on that count. For respondent's conviction on count three, the Court denied probation, ordered two days in county jail, with credit for two days of good time/work time, and awarded no fines or fees.

5. On June 14, 2019, the court approved the withdrawal of counts one and two based upon respondent's plea agreement, and dismissed both these counts in the interest of justice, pursuant to Penal Code 1385.

6. Respondent's misconduct, for which she was ultimately convicted for a single misdemeanor for disturbing the peace, occurred on March 3, 2018 when she was arrested by an undercover police officer for her involvement in aiding an act of prostitution. Respondent had assisted in the appointment with the prostitute by making arrangements with the undercover police officer via text, providing parking instructions and directions, and provided a form of pimp/concierge services, by

welcoming the customer, an undercover police officer, into the apartment and collecting the fees, which she referred to as a donation. Respondent was very specific in her request for the amount of donation; before collecting the amount she asked how long an appointment he wanted, and charged him \$260 dollars for his requested one-hour appointment with the prostitute. After collecting the money, respondent directed the undercover police officer to the room where the prostitute was waiting. After he was greeted by the prostitute, his backup team arrived, and arrested respondent and the prostitute. Based upon the police officer's observations the apartment was clearly a place of prostitution; he found accessories typically used for sexual engagement, a ledger book, and two other individuals, a male and female, in undergarments in another room, who subsequently, and before being detained, climbed out the window and escaped into the community.

7. At the time of her arrest, respondent apologized to the undercover officer for the incident, and for not being able to return his money, or the change she owed him, because she gave it to the female individual who had escaped out the window. No other statements by respondent were memorialized by the undercover officer in his report. (Ex. 5.)

8. During the hearing, respondent explained this was a one-time "favor" for her sister, who she claimed operated the prostitution business. Respondent explained she had been going through an extremely difficult emotional time at the time of the incident. The previous year, shortly after her marriage, her husband left her, a fact she tried to hide from everyone. She eventually decided to take a leave of absence from her job as a pharmacist due to her emotional condition. With her sister's encouragement, she travelled with her on a trip overseas during which time the sister was scheduled to undergo a medical procedure. According to respondent, her sister

was running a prostitution operation, which she might have "vaguely" been aware but did not pay much attention to prior to that trip. Respondent became ill and arrived home earlier than her sister. At her sister's request, she provided the above-described concierge-type services in her absence, but for just one day. Respondent was arrested as a result of her participation in the prostitution operation, which respondents claimed was her sister's.

9. There is no evidentiary support in the police report for respondent's claim that it was her sister's illegal operation. There is no evidence of a police investigation which identified respondent's sister as the individual leasing or renting the apartment where the illicit activities occurred, and there is no evidence respondent's sister was identified by law enforcement or arrested for her involvement in the business of prostitution. According to respondent, her sister, although well-educated, is currently unemployed, lives with her and her mother, and relies on respondent for financial support. Respondent maintains she intentionally did not refer the police to her sister to protect her. Considering how the District Attorney and the court decided to handle the criminal complaint against respondent with diversion and a relatively minor misdemeanor sentence, it is likely that the District Attorney made a determination that the arrest of respondent and one prostitute was sufficient to terminate the illegal conduct at that location, and no further investigation was warranted.

10. The degree of respondent's culpability for running a prostitution business, as the complainant insinuated through respondent's cross-examination, rather than being a participant in one incident, cannot be resolved by the evidence submitted. Ultimately, the misdemeanor conviction, based upon respondent's plea agreement, provides the only conclusive evidence of respondent's misconduct and

guilt. As such, respondent's misconduct for the purpose of determining discipline, is based upon one incident involving the underlying act of assisting or promoting prostitution.

11. Respondent claims that the conviction is not substantially related to the practice of pharmacy. The complainant provided persuasive evidence through its investigator and experienced licensed pharmacist, (Exhibit 8), Elham Delune, that the practice of pharmacy is inconsistent with the substance of respondent's criminal conviction.

(A) Respondent's misconduct is not the typical charge related to the practice of pharmacy. Misconduct which is clearly related to the practice of pharmacy and which is routinely investigated, include, diversion of pharmaceuticals, fraudulent prescriptions, drug abuse, and those less common but related include, exchanging sexual favors for prescriptions.

(B) Respondent's illegal misconduct does not have an obvious nexus between the work of a pharmacist and the practice of pharmacy. Nevertheless, her intentional commission of a public offense which exposes women to personal harm, and which involves the exchange of large sums of cash for an illegal activity, demonstrates her extreme exercise of poor judgment.

(C) During cross-examination Ms. Delune illustrated how certain situations can be substantially related to the practice of pharmacy without having a direct relationship to the "nuts and bolts" of pharmaceutical practice. She described someone who went to a party and drives under the influence one time, and does not otherwise have a history of alcohol abuse. That misconduct does not have an obvious

link to the practice of pharmacy but nonetheless, creates a risk of harm to others, and demonstrates a serious lapse of judgment.

(D) Notably, Ms. Delune 's conclusions were drawn solely from her review of documentation, and therefore, not influenced by any subjective judgments of respondent's affect. While respondent suggested that her sole focus on documentation was a weakness, in fact it strengthened her opinion. Ms. Delune did not profess to be a psychologist or be capable of measuring the degree with which respondent could abandon good judgment and commit an illegal act, but not abandon her good judgment when acting as a licensee. Ms. Delune's testimony was consistent with duties of the Board to ensure, on the basis of objective evidence, that its licensees are capable of exercising good judgment and acting professionally. Based on Ms. Delune's testimony, whether respondent is capable of exercising good judgment establishes cause for discipline, but her actual historical performance as a pharmacist and other factors, are matters for consideration when considering the scope of her discipline.

12. Respondent's testimony provided further support for Ms. Delune's opinion. Perhaps, the most persuasive evidence of the substantial relationship between the conviction and the practice of pharmacy came from respondent's admissions during her hearing testimony. Respondent accepted responsibility for her actions and was clear about the negative consequences of her actions. She testified eloquently about the dangers to the women who engage in prostitution, abuses which are both physical and psychological. Based upon respondent's admissions, she committed an immoral act, or an act which is morally reprehensible, even if her act does not rise to the level of moral turpitude.

13. Respondent did not provide convincing evidence to challenge complainant's claim that her conduct was substantially related to the practice of pharmacy. Through her testimony, respondent admitted to a troubling history of undue influence by her mother and her sister. Respondent is an immigration success story but, due to her mother's work and school schedule, her older sister was also her caretaker. Respondent's mother obtained a college education and also worked many hours to support her and her sister. Respondent admitted to always wanting to be in the medical field, but she always listened to her mother and, at her mother's direction, chose pharmacy instead of medical school. Respondent admitted that, if true, she committed her criminal offense at the direction of her sister, who was overseas undergoing and recovering from a medical procedure and needed respondent to act as a concierge for prostitution in her place. According to respondent, as a direct consequence of respondent's obedience to her sister, respondent willingly participated in criminal conduct which she admitted placed women in danger. As the sole support of her mother since she graduated pharmacy school, and more recently, her well-educated sister who, for unknown reasons, is unemployed, respondent has additional financial stresses, which include her \$6,000 contribution to the \$8,000 monthly mortgage payment. As such, respondent's underlying motivation for her commission of an illegal and, in her view, immoral act, i.e., the undue influence exercised by her family, is a risk to public protection.

Aggravation, Mitigation and Rehabilitation

14. In aggravation, complainant submitted unrefuted evidence of respondent's two citations, which have been satisfied.

(A) The first citation was issued on November 25, 2013 for violations of: Business and Professions Code (Code) sections 4313 and 4314, and California Code

of Regulations, title 16, (CCR), section 1761, subdivision (a) (variation from prescription/erroneous or uncertain prescription, \$1500); CCR section 1711, subdivision (d) (quality assurance to prevent medication errors, \$1,000); and Code section 4081, subdivision (a) (maintenance of records of dangerous drugs, \$375). Respondent timely paid the total amount in fines of \$2,875. (Ex. 6.)

(B) The second citation was issued on August 25, 2017, in the total amount of \$500, for violating Code sections 4314 and 4113, subdivision (c) and CCR sections 1775 and 1716 (variation from prescription). (Ex. 7.) The citation was timely paid in full.

15. Complainant failed to provide sufficient evidence that these violations demonstrated aggravating circumstances warranting stricter discipline than that imposed for the respondent's criminal conduct. The Department found at the time the citations were issued that respondent's errors were not cause for more serious action against her license, and the substance of the citations did not reflect a pattern and practice of negligence or malfeasance in the exercise of respondent's licensing obligations.

16. Respondent's attempt to provide evidence of mitigating circumstances from the depression she suffered after her failed marriage was not convincing. Respondent's spouse left the marriage one month after the ceremony, in 2016. Respondent became severely depressed. Although respondent's struggles were undoubtedly genuine, there is no logical relationship between her depression and her overt act of providing concierge services for a prostitution business. Respondent conceded she did not participate in ongoing therapy for her depression, and based upon her own admissions, her misconduct arose from her submission to the undue influence of her older sister, who she referred to as her second mother.

17. Respondent's misconduct is serious, but respondent did provide convincing evidence that based upon her education and history as a pharmacist, her misconduct is unlikely to reoccur, and her contributions as a pharmacist serves the public interest.

(A) Respondent worked hard to obtain her education and licensure. She obtained a very high grade point average in pharmacy school, graduating Magna Cum Laude in May 2009. As a pharmacist-in-charge for a period of six years, from June 2015, until May 2015, she supervised up to 10 employees, managed the pharmacy, which dispensed 1,500 to 4,000 prescriptions weekly, and was responsible for setting goals for employees. Her first citation occurred during this period of time where she was responsible for all conduct in the pharmacy.

(B) Respondent is currently a staff pharmacist at CVS. In this capacity, she personally services customers and has developed an overall reputation for assisting customers in a personal and sensitive manner. Retired US Air Force Lieutenant Colonel and a frequent customer of respondent's current pharmacy, Michael O. Estira, was "impressed with her ability to complete tasks in a timely and professional manner," "her positive and caring attitude towards her customers and to all the people that she encounter[s]." "I am extremely proud to say that my health has been overwhelmingly astounding because of [respondent's] diligence in dispensing my medications in a timely and caring manner." (Ex. C.).

(C) Three character witnesses testified on respondent's behalf who are familiar with her work as a pharmacist. Respondent did not provide character evidence from individuals with direct supervisory responsibility over her. Nevertheless, the character witnesses support and explain respondent's own testimony and are consistent with her work history. Loc Le was respondent's field supervisor between

2011 and 2014, but did not supervise her at the store level, and did not observe her day-to-day. He had not been in contact with respondent after he was no longer in a position to oversee her pharmacy. He was made aware of respondent's criminal conviction recently by her attorney, in her presence. As the field supervisor, reviewing reports of the operations and returns of respondent's pharmacy, he remembered her as an efficient, hard-working, dedicated and ethical pharmacist. Based upon her track record, he promoted respondent from a smaller pharmacy to a busy pharmacy. Mr. Le had not supervised respondent directly and was not in a position to be informed of her citations, but he was aware of the circumstances of the first citation. Regardless of respondent's citations and misconduct, from his oversight of her work as a field supervisor, Mr. Le believed respondent should be given a second chance.

(D) Mathew Guerrero, a staff pharmacist, has worked with respondent for several years during common shifts at the retail pharmacy. He attested to her kindness and compassion with customers. Despite the crush of business, he has observed her taking clients down the aisles to show them the products they are looking for. Mr. Guerrero was surprised to learn of her conviction because it was contrary to her character, and remains steadfast in his opinion that given what he has observed at work, respondent will not repeat her mistake which led to her conviction.

(E) Steffi Morales, a pharmacy technician, shared the observations of Mr. Guerrero. She has worked with respondent for several years, knows of her conviction, and nevertheless is steadfast in her opinion that respondent is a compassionate, ethical and competent pharmacist. She too has observed her with customers and remains impressed with her ability to balance individual care with a high volume retail pharmacy business.

18. Respondent also received personal endorsements from people who have observed her and know her in the community and who support and explain respondent's testimony about her background. Respondent did not show extensive involvement in community activities; however, since she became a pharmacist, she has been the sole support of her mother.

(A) Daniel Le May M.D., Ph.D., a Board-certified neurosurgeon, has known respondent personally for ten years since she has been a full-time pharmacist, and knows her to be honest, hardworking and ethical, a person who does not drink alcohol or use drugs. (Ex. E.)

(B) Myra Ford, DM (Doctor of Management), a former Non-Commissioned Officer in the Marine Corps, and now an employee of the Department of Defense, has known respondent in the community and has observed her as a nurturing and caring person, especially with her mother. (Ex. D.)

Costs of Investigation and Prosecution

19. Complainant provided evidence of the Board's costs of prosecution through October 23, 2019 in the amount of \$3,475 (Ex. 3.) No separate evidence of the cost of investigation was provided. The costs are reasonable.

LEGAL CONCLUSIONS

1. Under Code section 4300, subdivision (a), the Board may suspend or revoke a license or registration.

Causes for Discipline

2. Code section 4301 states, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to 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.

(l) The conviction of a crime substantially related to the qualifications, functions, duties of a licensee under this chapter. [...]. In all other cases the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The Board may inquire into the circumstances surrounding the commission of the crime, in order to fix the discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is substantially related to the qualifications, functions, and duties of a licensee under this chapter.

3. CCR section 2521 provides, in pertinent part, that for the purpose of imposing discipline, "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."

4. Cause exists by reason of Factual Finding 3 through 13 to discipline respondent's license for unprofessional conduct. Complainant provided sufficient evidence that respondent's act of providing concierge services for a prostitution enterprise, even on one occasion, is unprofessional conduct substantially related to the practice of pharmacy. Respondent's willingness to abandon her judgement and commit an illegal act which she considers immoral and at the direction of her family risks the public welfare.

Disposition

5. A determination that cause exists to suspend or revoke respondent's license does not end the inquiry. Such cause may be overcome with substantial, persuasive evidence of rehabilitation and good character. The Board has compiled a list of factors to evaluate whether a licensee has been rehabilitated from prior misconduct. That list, found in *A Manual of Disciplinary Guidelines and Model Disciplinary Orders* (Revised 2/2017), and which is incorporated by reference into the Board's regulations,¹ includes the nature and severity of the act under consideration; the actual or potential harm to any consumer or to the public; a licensee's prior disciplinary record; aggravating evidence; rehabilitation evidence; the licensee's compliance with the terms of any sentence, probation, or parole; the time that has elapsed since commission of the act; and evidence of dismissal of any conviction under Penal Code section 1203.4.

¹ CCR, § 1760.

6. Respondent has met many of the criterion of rehabilitation such that the public welfare shall be adequately protected by revocation stayed for a period of three years with terms and conditions. Respondent's conviction is relatively recent but she satisfied the terms of her diversion program and the court converted her conviction to a minor offense with the District Attorney's approval. Respondent has two citations which were paid in full, and which did not reflect a pattern and practice of violating the Pharmacy Law. Otherwise, there is no evidence that respondent was anything other than a competent, hard-working, diligent and compassionate pharmacist.

7. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

8. The Guidelines classify categories of violations and recommended penalties as Category I, II, or III. In this case, respondent's violation approximates a Category II violation, because it involves "disregard for public safety" and a "violation that reflect[s] on ethics" and includes "gross immorality" and moral turpitude (Guidelines, pp. 6-7.) Category I provides an insufficient probationary period to adequately protect the public due to respondent's failure to fully address her potential for undue influence from her family through therapy. The recommended penalty for a Category II violation ranges from a minimum of revocation stayed and three years' probation to a maximum of revocation. Given the circumstances of respondent's conduct, her depression and the evidence of undue influence by her family, Guidelines, condition 20, requiring a clinical diagnostic evaluation, has been included in the Order as condition 16.

Costs

9. Under section 125.3, the Board may request the administrative law judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The costs are reasonable and respondent has the means to pay the costs. Respondent shall be required to reimburse the Board for \$3,475 pursuant to an appropriate payment plan approved by the Board, as set forth in the Order below.

ORDER

License number RPH 63317, issued to respondent Cuong Kim Tran, is revoked; however, the revocation is stayed and Respondent is placed on probation for a period of three years upon the following terms and conditions.

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;

- a conviction of any crime;
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview

without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skills and knowledge as a pharmacist as directed by the Board or its designee.

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 6419 (OAH number 2019070466) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of her employer(s), and the name(s) and telephone number(s) of all of her direct supervisor(s), as well as

any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known.

Respondent shall also include the reason(s) for leaving the prior employment.

Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring.

Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6419 (OAH number 2019070466), and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 6419 (OAH number 2019070466), and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6419 (OAH number 2019070466), and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 6419 (OAH number 2019070466), and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a licensed pharmacist, or any position for which a licensed pharmacist is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

8. Restrictions on Supervision and Oversight of Licensed Facilities (Not appropriate for Pharmacy Technicians)

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any entity licensed by the Board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$3,475. Respondent shall make payments according to a payment schedule approved by the board or its designee.

There shall be no deviation from the payment schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

Respondent shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

10. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be

payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

11. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacist license with the board, including any period during which suspension or probation is tolled.

Failure to maintain an active, current pharmacist license shall be considered a violation of probation.

If respondent's pharmacist license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish her registration, including any indicia of licensure issued by the board, along with a request to surrender the registration. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

13. Certification Prior to Resuming Work

Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the board within ten (10) days of receipt. Failure to maintain active, current certification or to timely submit proof of same shall be considered a violation of probation.

14. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a licensed pharmacist in California for a minimum number of hours per calendar month as determined by the board. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a licensed pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a licensed pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

15. Violation of Probation

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry

out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. Clinical Diagnostic Evaluation

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter required by the board or its designee, respondent shall undergo, at her own expense, a clinical diagnostic evaluation by a practitioner selected or approved prior to the evaluation by the board or its designee. The approved evaluator shall be provided with a copy of the board's accusation and decision in in case number 6419 (OAH number 2019070466). Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a licensed pharmacist with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to, other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines respondent is unable to practice safely or independently, the licensed mental health practitioner shall

notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board or its designee that practice may resume.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

17. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

DATE: January 3, 2020

DocuSigned by:

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EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings

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7

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

12 In the Matter of the Accusation Against:

Case No. 6419

13 **CUONG KIM TRAN**
14 **512 N. Guadalupe Ave.**
Redondo Beach, CA 90277

ACCUSATION

15 **Pharmacist License No. RPH 63317**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Anne Sodergren ("Complainant") brings this Accusation solely in her official
21 capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about October 22, 2009, the Board of Pharmacy issued Pharmacist License
24 Number RPH 63317 to Cuong Kim Tran ("Respondent"). The Pharmacist License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on February 28,
26 2021, unless renewed.

27 ///

JURISDICTION

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

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

5. Section **4300** of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

6. Section **4300.1** of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, 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."

7. Section **4301** of the Code states:

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

4 ...

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

8 ...

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

26 ...

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

28 ...

8. Section **492** of the Code states:

“Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

“This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.”

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 2521 states, in pertinent part:

“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

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

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1 **CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 11. Respondent is subject to disciplinary action under section 4301 of the Code in that
4 Respondent committed acts of unprofessional conduct. The circumstances are as follows:

5 a. On or about June 14, 2018, after pleading nolo contendere, Respondent was found
6 guilty of Penal Code section 315 [Keeping a House of Ill-Fame] and Penal Code section
7 653.23(A) [Pimping/Supervising a Prostitute], in the criminal proceeding entitled *The People of*
8 *the State of California v. Cuong Kim Tran* (Super. Ct. Los Angeles County, No. 8AR00615). The
9 Court placed Respondent on informal diversion for a period of twelve (12) months with terms and
10 conditions, perform thirty (30) days of community labor, stay away from 7225 Crescent Park,
11 post no ads, and obey all laws, rules and orders of the Court.

12 b. The underlying circumstances are that on or about March 3, 2018, Los Angeles Police
13 Department Vice Officers were monitoring Internet sites for prostitutes who were soliciting
14 sexual services. Vice Officers conducted an In-Call Investigation¹ at 7225 Crescent Park in Los
15 Angeles, CA. There, an undercover officer was greeted by Respondent who proceeded to charge
16 him two-hundred and sixty (\$260) dollars as a “donation.” Respondent then guided the
17 undercover officer to a private room where he was introduced to another female who was later
18 arrested for prostitution. Respondent was arrested for having knowledge of the prostitution
19 activities and actively participating in directing and accepting the customer, guiding the
20 prostitutes, collecting the prostitutes’ pay and delaying the investigation by the Vice Officers.

21 **DISCIPLINE CONSIDERATIONS**

22 12. To determine the degree of discipline, if any, to be imposed on Respondent,
23 Complainant alleges that on or about November 25, 2013, in a prior action, the Board of
24 Pharmacy issued Citation Number CI 2013 58882 and ordered Respondent to pay fines in the
25 amount of \$2,875.00. That Citation is now final and is incorporated by reference as if fully set
26
27

28 ¹ In-call Investigations are when the customers respond the prostitute’s location.

1 forth.

2 13. Complainant further alleges that on or about August 25, 2017, in a prior action, the
3 Board of Pharmacy issued Citation Number CI 2017 76084 and ordered Respondent to pay a fine
4 in the amount of \$500.00. That Citation is now final and is incorporated by reference as if fully
5 set forth.

6
7 **PRAYER**

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

10 1. Revoking or suspending Pharmacist License Number RPH 63317, issued to Cuong
11 Kim Tran;

12 2. Ordering Cuong Kim Tran to pay the Board of Pharmacy the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3; and,

15 3. Taking such other and further action as deemed necessary and proper.

16
17
18 DATED: May 1, 2019



19 ANNE SODERGREN
20 Interim Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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