

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

In the Matter of the Accusation against:

JOHN BANSUK PARK, Respondent

Agency Case no. 6770

OAH Case No. 2020030546

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephone conference on July 8, 2020.

Helene E. Rouse, Deputy Attorney General, represented Complainant, Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Respondent John Bansuk Park participated and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 8, 2020. The ALJ hereby makes his factual findings, legal conclusions, and order, as follows.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation in this matter, and maintained this proceeding, while acting in her official capacity.¹

2. Respondent is licensed by the Board as a pharmacist. He holds Pharmacist License Number RPH 65907. That license was first issued to him on August 23, 2011. It was suspended on October 3, 2019, by an order of the Superior Court. The license will expire on May 31, 2021 unless renewed.

3. The Accusation asserts two grounds for discipline against Respondent's license. First, that he was convicted of crime substantially related to the duties, qualifications, and functions of a pharmacist. The second claim asserts Respondent engaged in acts of moral turpitude and dishonesty. After he was served with the Accusation, Respondent filed a Notice of Defense, seeking a hearing. All jurisdictional requirements have been met.

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¹ The ALJ takes notice of the fact that Ms. Sodergren was Interim Executive Director of the Board when she filed the Accusation, but is now the Board's Executive Director. The ALJ took notice of the cost declaration, where Ms. Rouse identified Ms. Sodergren as Executive Director, and the ALJ reviewed the Board's website to confirm that her status has changed from interim, to permanent.

Respondent's Criminal Conviction

4. On October 3, 2019, in the Superior Court of California, County of Los Angeles, Respondent was convicted of one count of grand theft, in violation of Penal Code section 487, subdivision (a). His criminal conviction was based on his plea of nolo contendere, made on July 25, 2019. By his plea, Respondent was convicted of a felony.

5. Respondent was sentenced on October 3, 2019. The court suspended sentence, and placed Respondent on three year's formal probation. As a probation term, he was ordered to perform 280 hours of community service, and to pay restitution of \$10,000. He was also ordered not to practice as a pharmacist during the term of probation. Other terms and conditions, typical to probation grants, were imposed.

6. The facts and circumstances of the crime, in brief, are that Respondent, in the period between October 2016 and March 2018, signed various documents that contained misrepresentations, to induce a local health care organization to authorize payment for expensive medications.

7. Respondent operated a pharmacy in Cerritos, California with the business name of BetteRx Pharmacy. Some of his customers received medical care, including drug prescriptions, from L. A. Care, a non-profit entity funded by Medi-Cal. In some cases, a prescription for a particular medicine could only be filled after the patient's doctor or the pharmacy obtained authorization. That authorization would not be provided unless other, less expensive, medications had been tried first. The medications for which authorization was requested were high-cost medications.

8. An investigation indicated that numerous authorization forms were issued by Respondent, for patients of L. A. Care.² On those forms Respondent indicated that certain medications had been tried during the care of the customer/patients, when in fact the “prior” medications had not all been prescribed for the patients. In many cases, Respondent signed the documents indicating that he was the patient’s doctor. He sometimes used a doctor’s name when he signed the authorization forms. Those forms were submitted to L. A. Care, which was induced to fund the expensive medications.

9. Respondent’s conviction was for a crime involving moral turpitude, fraud, and deceit, and it was substantially related to the duties, qualifications, and functions of a pharmacist.

Other Matters

10. Respondent testified that when he signed the authorization forms, he thought he was signing as the pharmacist, in part because the signature box, as it appeared on a computer screen, did not clearly indicate that it was a doctor’s signature block. He had no intent to defraud, he asserted, only wanting to streamline the process of obtaining needed medications for the patient/customers.

11. Respondent’s explanation is not credited given the information in the investigation report. The investigator established that the list of medications set forth in many of the authorization requests as having previously been prescribed, did not jibe with the patients’ medical records, which records were reviewed by the

² See the investigation report, exhibit 3, pages 38-47.

investigator. And, various doctors established they had not signed the authorization forms, even though their names were on the documents.

12. In his testimony, Respondent otherwise appeared as an earnest individual who genuinely cared for his customers. It may be inferred that some of his transgressions were the result of his desire to get needed (in his mind) medications to patient's whose options were limited by Medi-Cal. However, such does not excuse his misconduct. He provided little evidence of rehabilitation.

13. Respondent is in compliance with his probation terms, having paid his restitution. Due to the pandemic, he is not meeting personally with his probation officer, instead checking in by telephone.

14. After the Respondent's wrongful behavior came to light, the Medi-Cal provider reversed its payments to him, in an amount approximating \$500,000.

15. The Board has incurred costs in the investigation and prosecution of this matter. Those costs amount to \$2,310, which are reasonable on their face.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed under Business and Professions Code section 4300³ was established, based on Factual Findings 1 through 3.

³ Further statutory citations are to the Business and Professions Code unless otherwise noted.

2. Respondent's license is subject to discipline pursuant to section 490, and 4301, subdivision (j), as well as California Code of Regulations (CCR), title 16, section 1770, because he was convicted of a crime substantially related to the duties, functions, and qualifications of a pharmacist. This Conclusion is based upon Factual Findings 2, and 4 through 11.

3. Respondent's license is subject to discipline pursuant to section 4301, subdivision (f), because he has engaged in acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, based on Factual Findings 2, and 4 through 11. (See also *In Re Rothrock* (1944) 25 Cal.2d 588 [petty theft, and other crimes of dishonesty, show moral turpitude].)

4. The Board is entitled to recover its costs of investigation and prosecution pursuant to section 125.3, based on Legal Conclusions 1 through 3. The reasonable costs are \$2,310, based on Factual Finding 15. Notwithstanding this Legal Conclusion, costs shall not be recovered at this time.

5. Respondent's misconduct is fairly recent, occurring between late 2016 and the spring of 2018, or approximately two years ago. The conviction occurred less than one year ago. There is no significant evidence of rehabilitation, and it is difficult to establish that rehabilitation has occurred within 10 months of a conviction for such a serious crime. While Respondent may be a skilled pharmacist, from a technical perspective, more is required from him. That is, he may be able to discern when a doctor's prescription *might* not be appropriate, or where a different medication might be recommended, but such is not enough. Respondent must be honest and trustworthy, and his conviction indicates he has not always been honest and trustworthy. Further, the acts underlying the conviction negatively implicated Respondent's professional responsibilities.

6. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (E.g. *Camacho v. Youde* (1979) 95 Cal.App.3d 161,164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.) Further, the Board's paramount duty is to protect the public. (§4001.1.)

7. The Board has adopted criteria to consider when determining the discipline to be imposed for conviction of a crime. Thus, California Code of Regulations, title 16, section 1769, subdivision (c), provides that the Board should consider the nature and severity of the act, the licensee's total criminal record, the time that has passed since the misconduct occurred, whether the licensee has complied with any probation terms, and evidence of rehabilitation. While Respondent has no other criminal record, his conviction is for a serious felony, and his license was used to commit the crime. His criminal conduct and his conviction are fairly recent, and he will be on probation for over two more years. He has little evidence of rehabilitation. Public protection, at this time, requires revocation of Respondent's license to act as a pharmacist.

8. The Respondent may reapply for licensure at such time as the law allows. At that time, he will bear the burden of establishing that he is sufficiently rehabilitated as to again be trusted with a pharmacist's license.

9. In light of the order that follows, Respondent will not be obligated to pay costs at this time. However, if he seeks re-licensure, at that time the Board may require payment of the costs as a prerequisite to licensure.

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ORDER

The pharmacist's license issued to Respondent John Bansuk Park, number RPH 65907, is hereby revoked.

Should Respondent seek reinstatement of his license, he may be required to pay the Board's costs of \$2,310, as a term of re-licensure.

DATE: August 6, 2020

DocuSigned by:
Joseph D. Montoya
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JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings

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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. 6770

13 **JOHN BANSUK PARK**

ACCUSATION

14 11855 E. South Street
Cerritos, CA 90703

15 **Pharmacist License No. RPH 65907**

16 Respondent.

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18 **PARTIES**

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

22 2. On or about August 23, 2011, the Board issued Pharmacist License Number RPH
23 65907 to John Bansuk Park (Respondent). The Pharmacist License was suspended on October 3,
24 2019 and will expire on May 31, 2021, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment.

3 **REGULATORY PROVISIONS**

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

5 For the purpose of denial, suspension, or revocation of a personal or facility
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
7 Professions Code, a crime or act shall be considered substantially related to the
8 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.

9 **COST RECOVERY**

10 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(October 3, 2019 Criminal Conviction –**

18 **Grand Theft on October 26, 2016 to March 14, 2018)**

19 10. Respondent is subject to disciplinary action under Code sections 490 and 4301(I), in
20 conjunction with California Code of Regulations, title 16, section 1770, in that on or about
21 October 3, 2019, in a criminal proceeding entitled *The People of the State of California vs. John*
22 *Bansuk Park*, in Los Angeles County Superior Court, case number BA464634, Respondent was
23 convicted of violating Penal Code section 487(a) (grand theft), a felony. Respondent was placed
24 on three years probation, ordered to complete 280 hours of community service, and pay fines,
25 fees, and \$10,000 in victim restitution.

26 The circumstances underlying the conviction are that on or about October 26, 2016 to on or
27 about March 14, 2018, Respondent willfully and unlawfully took money and personal property of
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1 another exceeding \$950. Respondent was a Medi-Cal provider and was part of a scheme to
2 defraud \$10,000 from the Los Angeles Care Health Plan, a local public agency.

3 **SECOND CAUSE FOR DISCIPLINE**

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

5 11. Respondent is subject to disciplinary action under Code section 4301(f), in that on or
6 about October 26, 2016 to on or about March 14, 2018, Respondent committed acts involving
7 moral turpitude, dishonesty, fraud, deceit, or corruption, as alleged above in paragraph 10.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacist License Number RPH 65907, issued to John
12 Bansuk Park;
- 13 2. Ordering John Bansuk Park to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and,
- 16 3. Taking such other and further action as deemed necessary and proper.

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19 DATED: November 14, 2019



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

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