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

In the Matter of the Accusation and Petition to Revoke Probation Against:

**HOAN T.L. NGUYEN  
dba ABORN PHARMACY  
2060 Aborn Road, Suite 150B  
San Jose, CA 95121**

**Original Permit No. PHY43166,**

Respondent.

Case No. 6783

**DEFAULT DECISION AND ORDER**

(Gov. Code, § 11520)

**FINDINGS OF FACT**

1. On October 22, 2019, Complainant Anne Sodergren, in her official capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation and Petition to Revoke Probation No. 6783 against Hoan T.L. Nguyen dba Aborn Pharmacy (Respondent) before the Board. (Exhibit 1.)

2. On August 13, 1997, the Board issued Original Permit Number No. PHY 43166 to Respondent. This original permit expired on May 8, 2019, due to discontinuation of the business and has not been renewed.

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1           3.       Business and Professions Code section 4300.1 states:

2           “The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
3 operation of law or by order or decision of the board or a court of law, the placement of a license  
4 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
5 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
6 proceeding against, the licensee or to render a decision suspending or revoking the license”

7           4.       On October 24, 2019, Respondent was served by certified and first class mail  
8 copies of the Accusation and Petition to Revoke Probation No. 6783, Statement to Respondent,  
9 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections  
10 11507.5, 11507.6, and 11507.7) at Respondent’s address of record which, under Business and  
11 Professions Code section 4100, is required to be reported and maintained with the Board.  
12 Respondent’s address of record was and is 2060 Aborn Road, Suite 150B, San Jose, CA 95121.

13           5.       Service of the accusation and petition to revoke probation was effective as a matter  
14 of law under the provisions of Government Code section 11505, subdivision (c), and/or Business  
15 and Professions Code section 124.

16           6.       Government Code section 11506, subdivision (c), states in part:

17           “The respondent shall be entitled to a hearing on the merits if the respondent files a notice  
18 of defense . . . and the notice shall be deemed a specific denial of all parts of the accusation . . .  
19 not expressly admitted. Failure to file a notice of defense . . . shall constitute a waiver of  
20 respondent’s right to a hearing, but the agency in its discretion may nevertheless grant a hearing.”

21           7.       The Board takes official notice of its records and the fact that Respondent failed to  
22 file a notice of defense within 15 days after service upon her of the accusation and petition to  
23 revoke probation, and therefore waived its right to a hearing on the merits of Accusation and  
24 Petition to Revoke Probation No. 6783.

25           8.       California Government Code section 11520, subdivision (a), states in part:

26           “If the respondent either fails to file a notice of defense . . . or to appear at the hearing, the  
27 agency may take action based upon the respondent’s express admissions or upon other evidence  
28 and affidavits may be used as evidence without any notice to respondent . . . .”



1 **Petition to Revoke Probation**

- 2 a. Failure to Comply with Probation Terms (Probation Condition 15)
- 3 b. Failure to Obey Laws and Regulations (Probation Condition 2)

4 **ORDER**

5 IT IS ORDERED that Original Permit Number No. PHY 43166 issued to Respondent

6 Hoan T.L. Nguyen dba Aborn Pharmacy is revoked.

7 Under Government Code section 11520, subdivision (c), Respondent may serve a written

8 motion requesting that the decision be vacated and stating the grounds relied on within seven days

9 after service of the decision on Respondent. The agency in its discretion may vacate the decision

10 and grant a hearing on a showing of good cause, as defined in the statute.

11 This Decision shall become effective at 5:00 p.m. on February 26, 2020.

12 It is so ORDERED on January 27, 2020.

13 FOR THE BOARD OF PHARMACY

14 DEPARTMENT OF CONSUMER AFFAIRS

15 STATE OF CALIFORNIA

16

17 By 

18 \_\_\_\_\_

19 Greg Lippe  
20 Board President

21 21727578.DOCX  
22 DOJ Matter ID:SF2019201925

23 Attachment: Exhibit 1: Accusation and Petition to Revoke Probation

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25

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# Exhibit 1

Accusation

1 XAVIER BECERRA  
Attorney General of California  
2 CHAR SACHSON  
Supervising Deputy Attorney General  
3 GREGORY TUSS  
Deputy Attorney General  
4 State Bar No. 200659  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3435  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*  
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. 6783

13 **HOAN T.L. NGUYEN**  
14 **dba ABORN PHARMACY**  
15 **2060 Aborn Road, Suite 150B**  
16 **San Jose, CA 95121**

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

17 **Original Permit No. PHY 43166,**

Respondent.

18 **PARTIES**

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

22 2. On or about August 13, 1997, the Board issued Original Permit No. PHY 43166 to  
23 Hoan T.L. Nguyen dba Aborn Pharmacy (Respondent). This permit expired on May 8, 2019, due  
24 to discontinuation of the business and has not been 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 unless otherwise indicated.  
28



1 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
3 federal and state laws and regulations governing pharmacy, including regulations established by  
4 the board or by any other state or federal regulatory agency.”

5 7. Section 4307 states in part:

6 “(a) Any person who has been denied a license or whose license has been revoked or is  
7 under suspension, or who has failed to renew his or her license while it was under suspension, or  
8 who has been a manager, administrator, owner, member, officer, director, associate, partner, or  
9 any other person with management or control of any partnership, corporation, trust, firm, or  
10 association whose application for a license has been denied or revoked, is under suspension or has  
11 been placed on probation, and while acting as the manager, administrator, owner, member,  
12 officer, director, associate, partner, or any other person with management or control had  
13 knowledge of or knowingly participated in any conduct for which the license was denied,  
14 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,  
15 administrator, owner, member, officer, director, associate, partner, or in any other position with  
16 management or control of a licensee as follows:

17 “(1) Where a probationary license is issued or where an existing license is placed on  
18 probation, this prohibition shall remain in effect for a period not to exceed five years.

19 “(2) Where the license is denied or revoked, the prohibition shall continue until the license  
20 is issued or reinstated.

21 (b) ‘Manager, administrator, owner, member, officer, director, associate, partner, or any  
22 other person with management or control of a license’ as used in this section and Section 4308,  
23 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.”

24 8. Health and Safety Code section 11153, subdivision (a), states:

25 “A prescription for a controlled substance shall only be issued for a legitimate medical  
26 purpose by an individual practitioner acting in the usual course of his or her professional practice.  
27 The responsibility for the proper prescribing and dispensing of controlled substances is upon the  
28 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the

1 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)  
2 an order purporting to be a prescription which is issued not in the usual course of professional  
3 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of  
4 controlled substances, which is issued not in the course of professional treatment or as part of an  
5 authorized narcotic treatment program, for the purpose of providing the user with controlled  
6 substances, sufficient to keep him or her comfortable by maintaining customary use.”

### 7 **REGULATORY PROVISIONS**

8 9. Code of Federal Regulations, section 21, part 1306.04, subdivision (a), states:

9 “A prescription for a controlled substance to be effective must be issued for a legitimate  
10 medical purpose by an individual practitioner acting in the usual course of his professional  
11 practice. The responsibility for the proper prescribing and dispensing of controlled substances is  
12 upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist  
13 who fills the prescription. An order purporting to be a prescription issued not in the usual course  
14 of professional treatment or in legitimate and authorized research is not a prescription within the  
15 meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling  
16 such a purported prescription, as well as the person issuing it, shall be subject to the penalties  
17 provided for violations of the provisions of law relating to controlled substances.”

18 10. California Code of Regulations, title 16, section 1761, states:

19 “(a) No pharmacist shall compound or dispense any prescription which contains any  
20 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any  
21 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to  
22 validate the prescription.

23 “(b) Even after conferring with the prescriber, a pharmacist shall not compound or  
24 dispense a controlled substance prescription where the pharmacist knows or has objective reason  
25 to know that said prescription was not issued for a legitimate medical purpose.”

### 26 **COST RECOVERY**

27 11. Section 125.3, subdivision (a), states:

28 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary

1 proceeding before any board within the department or before the Osteopathic Medical Board,  
2 upon request of the entity bringing the proceedings, the administrative law judge may direct a  
3 licentiate found to have committed a violation or violations of the licensing act to pay a sum not  
4 to exceed the reasonable costs of the investigation and enforcement of the case.”

### 5 **DRUGS**

6 12. All drugs referenced in this accusation and petition to revoke probation are  
7 controlled substances under Health and Safety Code sections 11054—11058 or the Code of  
8 Federal Regulations, section 21, parts 1308.11—1308.15, and are dangerous drugs under  
9 Business and Professions Code section 4022.

### 10 **CURES**

11 13. The Controlled Substance Utilization Review and Evaluation System, or CURES,  
12 is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California  
13 serving the public health, regulatory oversight agencies, and law enforcement. CURES may also  
14 include Schedule V controlled substances if those substances are reported by the submitting party.  
15 Licensed pharmacists have access to CURES to reduce prescription drug abuse and diversion  
16 without affecting legitimate medical practice or patient care.

### 17 **FACTUAL BACKGROUND**

18 14. On April 22, 2019, the Board conducted an inspection of Respondent’s controlled  
19 substances practices and compliance with probation terms, which were imposed on Respondent  
20 effective March 13, 2019.

21 15. Respondent’s records showed that from April 15, 2016, to April 22, 2019,  
22 Respondent dispensed to eight patients approximately 505 prescriptions with objective  
23 indications of abuse or illegitimacy. This includes approximately six prescriptions dispensed  
24 from March 13, 2019, to April 22, 2019, when Respondent was on probation. The objective  
25 indications of abuse or illegitimacy included but were not limited to the following:

- 26 • Cash payments
- 27 • High doses of drugs, including carisoprodol, hydrocodone, acetaminophen and zolpidem
- 28 • Irregularities on the face of the prescription itself, for example, the prescription contained

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two sets of directions

- Long distance between the prescribers’ offices and Respondent
- Same combinations of drugs prescribed for multiple patients in the same family
- Prescriptions for medications with no logical connection to diagnosis or treatment, for example, carisoprodol prescribed for long-term use for multiple patients in the same family
- Same patient received prescriptions from numerous doctors
- Same patient received prescriptions from numerous pharmacies

16. Respondent had no documentation that it discussed any of these prescriptions with the prescribers. Moreover, Hoan T.L. Nguyen, who was Respondent’s pharmacist-in-charge (PIC) and who had been licensed as a pharmacist since 1991, stated that she only reviewed CURES when insurance rejected a patient’s payment. Ms. Nguyen also admitted she was “too busy” to review CURES, and instead delegated that responsibility to a non-licensed person who had insufficient medical knowledge and training.

**FIRST CAUSE FOR DISCIPLINE**

(Unprofessional Conduct: Failure to Exercise Corresponding Responsibility)

17. Respondent has subjected its permit to discipline for the unprofessional conduct of failing to exercise corresponding responsibility (Bus. & Prof. Code, § 4301, subd. (o); Health & Saf. Code, § 11153, subd. (a); Cal. Code Regs., tit. 16, § 1761; 21 C.F.R. § 1306.04(a)). The circumstances are set forth in paragraphs 14-16 above.

**SECOND CAUSE FOR DISCIPLINE**

(Unprofessional Conduct: Gross Negligence)

18. Respondent has subjected its permit to discipline for the unprofessional conduct of gross negligence (Bus. & Prof. Code, § 4301, subd. (c)). The circumstances are set forth in paragraphs 14-16 above.

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**THIRD CAUSE FOR DISCIPLINE**

(Unprofessional Conduct: Excessive Furnishing of Controlled Substances)

19. Respondent has subjected its permits to discipline for the unprofessional conduct of excessively furnishing controlled substances in violation of Health and Safety Code section 11153, subdivision (a) (Bus. & Prof. Code, § 4301, subd. (d)). The circumstances are set forth in paragraphs 14-16 above.

**OTHER DISCIPLINARY CONSIDERATIONS**

20. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on September 4, 2015, in Case No. CI 2013 59107, the Board issued a citation to Respondent failing to review a patient’s drug therapy (Cal. Code Regs., tit. 16, § 1707.3. That citation is final and has been completed.

21. Under section 4307, if discipline is imposed on Original Permit No. PHY 43166 while Hoan T.L. Nguyen had been an officer and owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Hoan T.L. Nguyen shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Permit No. PHY 43166 is placed on probation or until Original Permit No. PHY 43166 is reinstated if it is revoked.

**PETITION TO REVOKE PROBATION**

**PRIOR DISCIPLINARY ACTION**

22. *In the Matter of the Accusation Against Hoan T.L. Nguyen dba Aborn Pharmacy*, Board of Pharmacy Case No. 6300, the Board issued a decision revoking Respondent’s Original Permit No. PHY 43166 effective March 13, 2019. However, the revocation was stayed and Respondent’s permit was placed on probation for three years under certain terms and conditions. A copy of that decision is attached as exhibit 1 and incorporated by reference.

**FIRST CAUSE TO REVOKE PROBATION**

(Failure to Comply with Probation Terms)

23. At all times after the effective date of Respondent’s probation, the Board’s order stated:



1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
3 accusation and petition to revoke probation, and that following the hearing, the Board of  
4 Pharmacy issues a decision:

5 1. Revoking or suspending Original Permit No. PHY 43166 issued to Respondent  
6 Hoan T.L. Nguyen dba Aborn Pharmacy;

7 2. Prohibiting Hoan T.L. Nguyen from serving as a manager, administrator, owner,  
8 member, officer, director, associate, or partner of a licensee for five years if Original Permit No.  
9 PHY 43166 is placed on probation or until Original Permit No. PHY 43166 is reinstated if it is  
10 revoked;

11 3. Revoking the probation that was granted by the Board in Case No. 6300 and  
12 imposing the disciplinary order that was stayed revoking Original Permit No. PHY 43166 issued  
13 to Respondent Hoan T.L. Nguyen dba Aborn Pharmacy;

14 4. Ordering Respondent Hoan T.L. Nguyen dba Aborn Pharmacy to pay the board  
15 the reasonable costs of the investigation and enforcement of this case under Business and  
16 Professions Code section 125.3; and

17 5. Taking such other and further action as deemed necessary and proper.

18 DATED: October 22, 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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