

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

In the Matter of the Accusation Against:

DAVID C. TRINH, Respondent

Registered Pharmacist License No. RPH 49268

Agency Case No. 6806

DECISION AND ORDER

The attached Stipulated Surrender of License and Order 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 April 13, 2022.

It is so ORDERED on March 14, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" being the most prominent parts.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 AMBER N. WIPFLER
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6806

13 **DAVID C. TRINH**
14 **588 Missouri St #B**
San Francisco, CA 94107

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Registered Pharmacist License No. RPH 49268

16 Respondent.
17

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Xavier Becerra, Attorney General of the State of California, by Amber N. Wipfler, Deputy
25 Attorney General.

26 2. David Trinh (Respondent) is represented by Lucy S. McAllister, Attorney at Law,
27 255 N. Market Street, Suite 100, San Jose, CA 95110.

28 3. On or about March 21, 1997, the Board issued Registered Pharmacist License
Number RPH 49268 to Respondent. The Registered Pharmacist License was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 6806 and will expire on July
2 31, 2022, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 6806 was filed before the Board on September 11, 2020 and is
5 currently pending against Respondent. The Accusation and all other statutorily required
6 documents were properly served on Respondent on September 16, 2020. Respondent timely filed
7 a Notice of Defense contesting the Accusation. A copy of Accusation No. 6806 is attached as
8 Exhibit A and incorporated by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 6806. Respondent also has carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
13 Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
16 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
17 to the issuance of subpoenas to compel the attendance of witnesses and the production of
18 documents; the right to reconsideration and court review of an adverse decision; and all other
19 rights accorded by the California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 **CULPABILITY**

23 8. Respondent understands that the charges and allegations in Accusation No. 6806, if
24 proven at a hearing, constitute cause for imposing discipline upon his Registered Pharmacist
25 License.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of
27 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
28 basis for the charges in the Accusation and that those charges constitute cause for discipline.

Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation, he enables the Board to issue an order accepting the surrender of his Registered Pharmacist License without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw the 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 Surrender and Disciplinary Order 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.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of License and Order 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 Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

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ORDER

IT IS HEREBY ORDERED that Registered Pharmacist License No. RPH 49268, issued to David C. Trinh, is surrendered and accepted by the Board.

1. The surrender of Registered Pharmacist License No. RPH 49268, and the acceptance of the surrendered license by the Board, shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as licensed pharmacist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if issued, his wall certificates on or before the effective date of the Decision and Order.

4. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.

5. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 6806 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

6. Respondents shall pay the agency its costs of investigation and enforcement in the amount of \$8,500.00 prior to filing an application for a new or reinstated license.

///

1 **ACCEPTANCE**

2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney. I understand the stipulation and the effect it will have on my
4 Registered Pharmacist License. I enter into this Stipulated Surrender of License and Order
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
6 Board of Pharmacy.

7
8 DATED: _____

9 DAVID C. TRINH
10 *Respondent*

11 I have read and fully discussed with Respondent the terms and conditions and other matters
12 contained in this Stipulated Surrender of License and Order. I approve its form and content.

13 DATED: _____

14 LUCY S. MCALLISTER
15 *Attorney for Respondent*

16
17 **ENDORSEMENT**

18 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
19 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

20 DATED: _____

Respectfully submitted,

21 ROB BONTA
22 Attorney General of California
23 JOSHUA A. ROOM
24 Supervising Deputy Attorney General

25 AMBER N. WIPFLER
26 Deputy Attorney General
27 *Attorneys for Complainant*

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney. I understand the stipulation and the effect it will have on my Registered Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2/4/2022 David Trinh

DAVID C. TRINH
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 2/4/2022 J. S. McAllister

LUCY S. MCALLISTER
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: _____ Respectfully submitted,
ROB BONTA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General

AMBER N. WIPFLER
Deputy Attorney General
Attorneys for Complainant

1 **ACCEPTANCE**

2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney. I understand the stipulation and the effect it will have on my
4 Registered Pharmacist License. I enter into this Stipulated Surrender of License and Order
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
6 Board of Pharmacy.

7
8 DATED: _____

9 DAVID C. TRINH
10 *Respondent*

11 I have read and fully discussed with Respondent the terms and conditions and other matters
12 contained in this Stipulated Surrender of License and Order. I approve its form and content.

13 DATED: _____

14 LUCY S. MCALLISTER
15 *Attorney for Respondent*

16
17 **ENDORSEMENT**

18 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
19 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

20 DATED: February 4, 2022

Respectfully submitted,

21 ROB BONTA
22 Attorney General of California
23 JOSHUA A. ROOM
Supervising Deputy Attorney General

24 

25
26 AMBER N. WIPFLER
27 Deputy Attorney General
28 *Attorneys for Complainant*

Exhibit A

Accusation No. 6806

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 AMBER N. WIPFLER
Deputy Attorney General
4 State Bar No. 238484
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6806

13 **DISCOSCRIPT INC.**
14 **DBA MAXIMART PHARMACY**
15 **Benjamin Kwong, President**
16 **George Kwong, Vice President**
17 **Robin Kwong, Secretary**
240 Cambridge Avenue
Palo Alto, CA 94306

ACCUSATION

18 Original Pharmacy Permit No. PHY 20175

19 **BENJAMIN KWONG**
20 **21958 Oakdell Place**
Cupertino, CA 95014

21 Registered Pharmacist License No. RPH 24415

22 **DAVID C. TRINH**
23 **588 Missouri St #B**
24 **San Francisco, CA 94107**

25 Registered Pharmacist License No. RPH 49268

26 Respondents.
27
28

1 **PARTIES**

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

4 2. On or about April 17, 1978, the Board issued Original Pharmacy Permit Number
5 PHY 20175 to Discoscript, Inc., dba Maximart Pharmacy, Benjamin Kwong, President; George
6 Kwong, Vice President; Robin Kwong, Secretary (Respondent Maximart). The Original
7 Pharmacy Permit Number was in full force and effect at all times relevant to the charges brought
8 herein and was canceled in or about November 2019.

9 3. On or about March 17, 1966, the Board issued Registered Pharmacist License
10 Number RPH 24415 to Benjamin Kwong (Respondent Kwong). The Registered Pharmacist
11 License was in full force and effect at all times relevant to the charges brought herein and expired
12 on February 29, 2020.

13 4. On or about March 21, 1997, the Board issued Registered Pharmacist License
14 Number RPH 49268 to David C. Trinh (Respondent Trinh). The Registered Pharmacist License
15 was in full force and effect at all times relevant to the charges brought herein and will expire on
16 July 31, 2022, unless renewed.

17 **JURISDICTION**

18 5. This Accusation is brought before the Board under the authority of the following
19 laws. All section references are to the Business and Professions Code unless otherwise indicated.

20 6. Code section 4011 provides that the Board shall administer and enforce both the
21 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act
22 [Health & Safety Code, § 11000 et seq.].

23 7. Code section 4300, subdivision (a) provides that every license issued by the Board
24 may be suspended or revoked.

25 8. Code section 4300.1 provides that the expiration, cancellation, forfeiture, or
26 suspension of a Board-issued license, the placement of a license on a retired status, or the
27 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
28

1 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
2 licensee or to render a decision suspending or revoking the license.

3 **STATUTORY AND REGULATORY PROVISIONS**

4 9. Code section 4059, subdivision (a) states:

5 A person may not furnish any dangerous drug, except upon the prescription of a physician,
6 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
7 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
8 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
9 Section 3640.7.

10 10. Code section 4081 states:

11 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
12 disposition of dangerous drugs or dangerous devices shall be at all times during
13 business hours open to inspection by authorized officers of the law, and shall be
14 preserved for at least three years from the date of making. A current inventory shall
15 be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy,
16 veterinary food-animal drug retailer, outsourcing facility, physician, dentist,
17 podiatrist, veterinarian, laboratory, licensed correctional clinic, as defined in Section
18 4187, clinic, hospital, institution, or establishment holding a currently valid and
19 unrevoked certificate, license, permit, registration, or exemption under Division 2
20 (commencing with Section 1200) of the Health and Safety Code or under Part 4
21 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code
22 who maintains a stock of dangerous drugs or dangerous devices.

23 (b) The owner, officer, and partner of a pharmacy, wholesaler, third-party
24 logistics provider, or veterinary food-animal drug retailer shall be jointly responsible,
25 with the pharmacist-in-charge, responsible manager, or designated representative-in-
26 charge, for maintaining the records and inventory described in this section.

27 ...

28 11. Code section 4105, subdivision (f) states:

When requested by an authorized officer of the law or by an authorized representative of
the board, the owner, corporate officer, or manager of an entity licensed by the board shall
provide the board with the requested records within three business days of the time the
request was made. The entity may request in writing an extension of this timeframe for a
period not to exceed 14 calendar days from the date the records were requested. A request
for an extension of time is subject to the approval of the board. An extension shall be
deemed approved if the board fails to deny the extension request within two business days
of the time the extension request was made directly to the board.

12. Code section 4113, subdivision (c) states:

1 The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state
2 and federal laws and regulations pertaining to the practice of pharmacy.

3 13. Code section 4301 states:

4 The board shall take action against any holder of a license who is guilty of unprofessional
5 conduct or whose license has been issued by mistake. Unprofessional conduct includes,
6 but is not limited to, any of the following:

7 ...

8 (d) The clearly excessive furnishing of controlled substances in violation of
9 subdivision (a) of Section 11153 of the Health and Safety Code.

10 ...

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

14 ...

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

17 ...

18 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
19 abetting the violation of or conspiring to violate any provision or term of this chapter or of
20 the applicable federal and state laws and regulations governing pharmacy, including
21 regulations established by the board or by any other state or federal regulatory agency.

22 ...

23 (q) Engaging in any conduct that subverts or attempts to subvert an investigation
24 of the board.

25 ...

26 14. Section 4307, subdivision (a), of the Code states that:

27 Any person who has been denied a license or whose license has been revoked
28 or is under suspension, or who has failed to renew his or her license while it was
under suspension, or who has been a manager, administrator, owner, member, officer,
director, associate, or partner of any partnership, corporation, firm, or association
whose application for a license has been denied or revoked, is under suspension or
has been placed on probation, and while acting as the manger, administrator, owner,
member, officer, director, associate, or partner had knowledge or knowingly

participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

15. Health and Safety Code section 11153, subdivision (a) states, in pertinent part:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research . . .

16. Health and Safety Code section 11170 states: “No person shall prescribe, administer, or furnish a controlled substance for himself.”

17. Health and Safety Code section 11173 states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

...

18. California Code of Regulations, title 16, section 1717.4, subdivision (h) states:

Any person who transmits, maintains, or receives any prescription or prescription refill, orally, in writing, or electronically, shall ensure the security, integrity, authenticity, and confidentiality of the prescription and any information contained therein.

19. California Code of Regulations, title 16, section 1718 provides, in pertinent part, that “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.”

1 ///

2
3 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

4 20. Section 4021 of the Code states: “‘Controlled substance’ means any substance listed
5 in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

6 21. Section 4022 of the Code states, in pertinent part:

7 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-
8 use, except veterinary drugs that are labeled as such, and includes the following:

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

11 . . .

12 (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.

13 22. **Alprazolam** (common trade name: **Xanax**) is a Schedule IV controlled substance as
14 designated by Health and Safety Code section 11057, subdivision (d)(1) and a dangerous drug as
15 designated by Code section 4022. It is a short-acting benzodiazepine used to treat anxiety.

16 23. **Diphenoxylate-atropine** (common trade name: **Lomotil**) is a Schedule V
17 controlled substance as designated by Health and Safety Code section 11058, subdivision (c)(4)
18 and a dangerous drug as designated by Code section 4022. It is a combination drug used to treat
19 diarrhea and irritable bowel syndrome.

20 24. **Finasteride** (common trade name: **Proscar, Propecia**) is a dangerous drug as
21 designated by Code section 4022. It is used to treat benign prostate hyperplasia and hair loss.

22 25. **Indomethacin** (common trade name: **Indocin**) is a dangerous drug as designated by
23 Code section 4022. It is a nonsteroidal anti-inflammatory drug used to treat mild to moderate
24 pain.

25 26. **Oxycodone** (common trade names: **Oxycontin, Roxicodone**) is a Schedule II
26 controlled substance as designated by Health and Safety Code section 11055, subdivision
27 (b)(1)(M), and a dangerous drug as designated by Code section 4022. It is an opioid analgesic
28 used to treat moderate to severe pain.

27. **Sildenafil** (common trade name: **Viagra**) is a dangerous drug as designated by Code section 4022. It is used to treat erectile dysfunction.

COST RECOVERY

28. 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 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL SUMMARY

29. Respondent Maximart operated a pharmacy in Palo Alto, California from 1978 until its permanent closure in November 2019. At all times relevant to the charges brought herein, Respondent Kwong was President and Pharmacist in Charge (PIC) of Respondent Maximart, and Respondent Trinh was a part-time staff pharmacist.

30. The Controlled Substance Utilization Review and Evaluation System (CURES) is California's prescription drug monitoring program. Pharmacies in California must report all filled prescriptions for Schedule II-IV controlled substances to the database every week.

31. In or about November 2018, a Board Inspector reviewed Respondent Maximart's CURES data for the time between November 19, 2015 and November 19, 2018. The Inspector discovered numerous controlled substance prescriptions with potential irregularities, and identified seven prescribers of interest and eight patients of interest.

32. On or about December 5, 2018, the Inspector went to Respondent Maximart's premises to conduct an inspection and audit of the following controlled substances: alprazolam 1mg; alprazolam 2mg; oxycodone 30mg; Oxycontin 60mg; zolpidem 5mg; and zolpidem 10 mg. Along with other documents necessary for the audit, the inspector collected 43 controlled substance prescription documents that raised suspicion, for reasons including multiple patients at the same address, unusual quantities of drugs, and significant distances between the pharmacy and the prescribers' offices.

1 33. Respondent Kwong was not present during the December 5, 2018 inspection. The
2 staff pharmacist on duty was not able to access all of the documents necessary for the audit, most
3 notably the wholesale acquisition/purchasing data for the audited period of June 1, 2017 to
4 December 4, 2018. In her inspection report, the Inspector instructed Respondent Maximart to
5 provide these additional documents.

6 34. On or about December 13, 2018, the Inspector received the missing acquisition data;
7 however, the data was unclear and incomplete. The Inspector sent two emails on or about
8 February 26 and February 27, 2019, seeking both clarification on the acquisition data and
9 additional documents relating to the 43 suspicious controlled substance prescriptions. The
10 Inspector received no response.

11 35. On or about March 5, 2019, the Inspector telephoned Respondent Maximart and was
12 informed by Respondent Kwong that the requested documents had been delivered to his newly
13 retained counsel. Between March 8, 2019 and March 18, 2019, the Inspector repeatedly asked
14 counsel to send the missing documents, but counsel failed to do so.

15 36. After obtaining Respondent Maximart's purchasing/acquisition records by contacting
16 its wholesaler directly, the Inspector was able to perform an audit. The audit revealed the
17 following shortages/overages for the period between May 30, 2017 and December 5, 2018:

- 18 • A shortage of 2,651 tablets of alprazolam 1mg
- 19 • A shortage of 106,251 tablets of alprazolam 2mg
- 20 • A shortage of 308 tablets of zolpidem 10mg
- 21 • A shortage of 1,924 tablets of zolpidem 5mg
- 22 • A shortage of 5,012 tablets of oxycodone 30mg
- 23 • An overage of 24 tablets of Oxycontin 60mg

24 37. Further investigation revealed that between December 25, 2015 and December 4,
25 2018, Respondent Maximart dispensed approximately 36 fraudulent prescriptions and 99
26 subsequent refills (135 total) without prescriber authorization, as follows:

27 ///

Drug	No. of prescriptions	No. of prescriptions and refills	Total quantity
Alprazolam 1mg	20	76	7,920 tablets
Alprazolam 2mg	7	21	2,900 tablets
Diphenoxylate-atropine 2.5-0.025mg	4	5	500 tablets
Total Controlled Substances	31	102	
Finasteride 5mg	1	1	30 tablets
Indomethacin 50mg	1	1	100 capsules
Viagra 100mg	3	31	156 tablets
Overall Total	36	135	

38. All 36 of the fraudulent prescriptions were written in Respondent Trinh's handwriting and dispensed by Respondent Trinh. Of the 135 total fraudulent prescriptions and refills, 131 were dispensed by Respondent Trinh.

39. Respondent Trinh dispensed 34 fraudulent prescriptions for controlled substances to himself as a patient, as follows:

Drug	No. of prescriptions/refills	Total quantity
Alprazolam 1mg	30	310 tablets
Diphenoxylate-atropine 2.5-0.025mg	4	400 tablets
Total	34	

40. Respondent Trinh dispensed numerous fraudulent prescriptions and refills to "T. Knox" and "C. Trinh." According to Respondent Maximart's records, "T. Knox" and "C. Trinh" have the same home address as Respondent Trinh.

///

1 **CAUSES FOR DISCIPLINE**

2 ***AS TO RESPONDENTS MAXIMART AND KWONG***

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Incomplete Inventory and/or Records of Acquisition and/or Disposition)**

5 41. Respondents Maximart and Kwong are each and severally subject to discipline under
6 section 4301, subdivision (j) and/or (o) and/or section 4113, subdivision (c) of the Code, by
7 reference to section(s) 4081 and/or 4105 of the Code, for violating statutes regulating controlled
8 substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or
9 assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in
10 that Respondent Maximart, as described in paragraph 36 above, failed to maintain a complete and
11 accurate inventory of dangerous drugs, specifically, alprazolam, zolpidem, oxycodone, and
12 Oxycontin.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Furnishing Dangerous Drugs Without Prescription)**

15 42. Respondents Maximart and Kwong are each and severally subject to discipline under
16 section 4301, subdivision (j) and/or (o) and/or section 4113, subdivision (c) of the Code, by
17 reference to section 4059, subdivision (a) of the Code, for violating statutes regulating controlled
18 substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or
19 assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in
20 that Respondent Maximart, as described in paragraph 37 above, dispensed approximately 135
21 fraudulent prescriptions and refills without the authorization of prescribers.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Failure to Ensure Integrity and Authenticity of Prescription)**

24 43. Respondents Maximart and Kwong are each and severally subject to discipline under
25 section 4301, subdivision (j) and/or (o) and/or section 4113, subdivision (c) of the Code, by
26 reference to California Code of Regulations, title 16, section 1717.4, subdivision (h), for violating
27 statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly
28 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations

governing the practice of pharmacy, in that Respondent Maximart, as described in paragraph 37 above, failed to ensure the integrity and authenticity of approximately 135 prescriptions/refills.

FOURTH CAUSE FOR DISCIPLINE

(Subverting or Attempting to Subvert Investigation)

44. Respondents Maximart and Kwong are each and severally subject to discipline under section 4301, subdivision (j) and/or (o) and/or section 4113, subdivision (c) of the Code, by reference to section 4105, subdivision (f) and/or section 4301, subdivision (q), for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that Respondent Maximart, as described in paragraphs 33-35 above, failed to provide an authorized representative of the Board with records requested in connection with an investigation.

AS TO RESPONDENT TRINH

FIFTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without Prescription)

45. Respondent Trinh is subject to discipline under section 4301, subdivision (j) and/or (o) of the Code, by reference to section 4059, subdivision (a) of the Code, for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that Respondent Trinh, as described in paragraphs 37-40 above, dispensed approximately 131 fraudulent prescriptions and refills without the authorization of prescribers.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Ensure Integrity and Authenticity of Prescription)

46. Respondent Trinh is subject to discipline under section 4301, subdivision (j) and/or (o) of the Code, by reference to California Code of Regulations, title 16, section 1717.4, subdivision (h), for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws

1 or regulations governing the practice of pharmacy, in that Respondent Trinh, as described in
2 paragraphs 37-40 above, failed to ensure the integrity and authenticity of approximately 131
3 prescriptions / refills.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Excessive Furnishing of Controlled Substances)**

6 47. Respondent Trinh is subject to discipline under Code section 4301, subdivision (d), in
7 that Respondent Trinh, as described in paragraphs 37-40 above, furnished excessively large
8 quantities of alprazolam 1mg and 2mg to himself and others.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

11 48. Respondent Trinh is subject to discipline under Code section 4301, subdivision (f), in
12 that Respondent Trinh, as described in paragraphs 37-40 above, committed acts of moral
13 turpitude, dishonesty, fraud, deceit, and/or corruption.

14 **NINTH CAUSE FOR DISCIPLINE**

15 **(Dispensing Unlawful Prescriptions)**

16 49. Respondent Trinh is subject to discipline under section 4301(j) and/or (o) of the
17 Code, by reference to Health and Safety Code section 11153, subdivision (a), for violating
18 statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly
19 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations
20 governing the practice of pharmacy, in that Respondent Trinh, as described in paragraphs 37-40
21 above, dispensed approximately 131 fraudulent prescriptions and refills that were issued outside
22 the usual course of professional treatment.

23 **TENTH CAUSE FOR DISCIPLINE**

24 **(Furnishing of Controlled Substance to Self)**

25 50. Respondent Trinh is subject to discipline under section 4301(j) and/or (o) of the
26 Code, by reference to Health and Safety Code section 11170, for violating statutes regulating
27 controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to
28 violate, or assisting in or abetting a violation of laws or regulations governing the practice of

1 pharmacy, in that Respondent Trinh, as described in paragraph 39 above, dispensed
2 approximately 34 controlled substance prescriptions and refills to himself.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Fraud, Deceit, Misrepresentation, or False Statement)**

5 51. Respondent Trinh is subject to discipline under section 4301(j) and/or (o) of the
6 Code, by reference to Health and Safety Code section 11173, subdivisions (a) and (b), for
7 violating statutes regulating controlled substances or dangerous drugs, and/or directly or
8 indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or
9 regulations governing the practice of pharmacy, in that Respondent Trinh, as described in
10 paragraphs 37-40 above, falsified approximately 31 controlled substance prescriptions, including
11 prescriptions dispensed to himself, and subsequently refilled these falsified prescriptions.

12 **DISCIPLINARY CONSIDERATIONS**

13 52. On or about May 12, 2016, the Board issued Citation CI 2015 66750 against
14 Respondent Maximart for violations of Code sections 4040, subdivision (a)(1)(B) (failure to
15 specify name/quantity of medication in writing), 4342 (dispensing expired medication), and 4104,
16 subdivision (c) (incorrect theft/impairment policy); as well as California Code of Regulations,
17 title 16, sections 1711, subdivision (d) (failure to perform quality assurance review), 1714,
18 subdivision (b) (failure to store medication safely), and 1716 (incorrect medication directions).

19 53. On or about May 12, 2016, the Board issued Citation CI 2015 70829 against
20 Respondent Kwong for violations of Code sections 4040, subdivision (a)(1)(B) (failure to specify
21 name/quantity of medication in writing), 4306.5, subdivision (b) (failure to exercise professional
22 judgment), 4342 (dispensing expired medication), and 4104, subdivision (c) (incorrect
23 theft/impairment policy); as well as California Code of Regulations, title 16, sections 1711,
24 subdivision (d) (failure to perform quality assurance review), 1714, subdivision (b) (failure to
25 store medication safely), and 1716 (incorrect medication directions).

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OTHER MATTERS

54. Pursuant to section 4307 of the Code, if discipline is imposed on Original Pharmacy Permit Number PHY 20175 issued to Respondent Maximart, Respondent Maximart shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacy Permit Number PHY 20175 is placed on probation or until Original Pharmacy Permit Number PHY 20175 is reinstated if it is revoked.

55. Pursuant to section 4307 of the Code, if discipline is imposed on Original Pharmacy Permit Number PHY 20175 issued to Respondent Maximart while Respondent Kwong has been an officer or owner and had knowledge of or knowingly participated in any conduct for which the license was disciplined, Respondent Kwong shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacy Permit Number PHY 20175 is placed on probation or until Original Pharmacy Permit Number PHY 20175 is reinstated if it is revoked.

56. Pursuant to section 4307 of the Code, if discipline is imposed on Original Pharmacist License Number RPH 24415 issued to Respondent Kwong, Respondent shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacist License Number RPH 24415 is placed on probation or until Original Pharmacist License Number RPH 24415 is reinstated if it is revoked.

57. Pursuant to section 4307 of the Code, if discipline is imposed on Original Pharmacist License Number RPH 49268 issued to Respondent Trinh, Respondent shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacist License Number RPH 49268 is placed on probation or until Original Pharmacist License Number RPH 49268 is reinstated if it is revoked.

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PRAYER

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

1. Revoking or suspending Original Permit No. PHY 20175 issued to Discoscript, Inc. dba Maximart Pharmacy (Respondent Maximart);

2. Revoking or suspending Registered Pharmacist License No. RPH 24415 issued to Benjamin Kwong (Respondent Kwong);

3. Revoking or suspending Registered Pharmacist License No. RPH 49268 issued to David C. Trinh (Respondent Trinh);

4. Prohibiting Respondent Maximart from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacy Permit Number PHY 20175 is placed on probation or until Original Pharmacy Permit Number PHY 20175 is reinstated if it is revoked;

5. Prohibiting Respondent Kwong from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacy Permit Number PHY 20175 is placed on probation or until Original Pharmacy Permit Number PHY 20175 is reinstated if it is revoked;

6. Prohibiting Respondent Kwong from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacist License Number RPH 24415 is placed on probation or until Original Pharmacist License Number RPH 24415 is reinstated if it is revoked;

7. Prohibiting Respondent Trinh from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacist License Number RPH 49268 is placed on probation or until Original Pharmacist License Number RPH 49268 is reinstated if it is revoked;

8. Ordering Discoscript, Inc. dba Maximart Pharmacy, Benjamin Kwong, and David C. Trinh to jointly and severally pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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9. Taking such other and further action as deemed necessary and proper.

DATED: 9/11/2020

Anne Sodergren

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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