

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

In the Matter of the Amended Accusation Against:

**MY LAN PHARMACY,
JOHN PHAM, PARTNER
NGA TUYET DANG, PARTNER
Pharmacy Permit Number No. PHY 35688;**

and

**NGA TUYET DANG,
Pharmacist License No. RPH 40599,**

Respondents.

Agency Case No. 6918

OAH No. 2020090955

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 November 10, 2021.

It is so ORDERED on October 11, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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" clearly distinguishable.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
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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 Amended Accusation
13 Against:

14 **MY LAN PHARMACY,**
15 **JOHN PHAM, PARTNER**
16 **NGA TUYET DANG, PARTNER**
401 East 18th Street, Suite B
Oakland, CA 94606

17 **Pharmacy Permit Number No. PHY 35688,**

18 **and**

19 **NGA TUYET DANG**
6420 Estates Drive,
20 **Oakland, CA 94611**
Pharmacist License No. RPH 40599

21 Respondents.
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Case No. 6918

OAH No. 2020090955

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

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1 **PARTIES**

2 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
3 (Board). She brought this action solely in her official capacity and is represented in this matter by
4 Xavier Becerra, Attorney General of the State of California, by Carla L. Cheung, Deputy
5 Attorney General.

6 2. On or about June 29, 1989, the Board of Pharmacy issued Pharmacy Permit Number
7 PHY 35688 to partners John Dung Pham and Nga Tuyet Dang, doing business as My Lan
8 Pharmacy (Respondent My Lan). The Pharmacy Permit was in full force and effect at all times
9 relevant to the charges brought herein and will expire on June 1, 2022, unless renewed.

10 3. On or about September 24, 1986, the Board of Pharmacy issued Pharmacist License
11 Number RPH 40599 to Nga Tuyet Dang (Respondent Dang). The Pharmacist License was in full
12 force and effect at all times relevant to the charges brought herein and will expire on January 31,
13 2022, unless renewed.

14 4. From on or about May 1, 2002 to the present, Respondent Dang served and/or was
15 listed in Board records as Pharmacist-in-Charge for Respondent My Lan.

16 5. Respondent My Lan Pharmacy and Respondent Nga Tuyet Dang (collectively
17 Respondents) are represented in this proceeding by attorney Robert B. Yee, whose address is:
18 315 Bay Street, 2nd Floor San Francisco, CA 94133.

19 **JURISDICTION**

20 6. Accusation No. 6918 was filed before the Board. The Accusation and all other
21 statutorily required documents were properly served on Respondents on August 13, 2020.
22 Respondents timely filed their Notice of Defense contesting the Accusation. Amended
23 Accusation No. 6918 was filed before the Board on February 17, 2021, and is currently pending
24 against Respondents.

25 7. A copy of Amended Accusation No. 6918 is attached as Exhibit A and incorporated
26 herein by reference.

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1 **ADVISEMENT AND WAIVERS**

2 8. Respondents have carefully read, fully discussed with counsel, and understand the
3 charges and allegations in Amended Accusation No. 6918. Respondents have also carefully read,
4 fully discussed with counsel, and understand the effects of this Stipulated Settlement and
5 Disciplinary Order.

6 9. Respondents are fully aware of their legal rights in this matter, including the right to a
7 hearing on the charges and allegations in the Amended Accusation; the right to confront and
8 cross-examine the witnesses against them; the right to present evidence and to testify on their own
9 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
10 production of documents; the right to reconsideration and court review of an adverse decision;
11 and all other rights accorded by the California Administrative Procedure Act and other applicable
12 laws.

13 10. Respondents voluntarily, knowingly, and intelligently waives and gives up each and
14 every right set forth above.

15 **CULPABILITY**

16 11. Respondents admit the truth of each and every charge and allegation in Amended
17 Accusation No. 6918.

18 12. Respondents agree that their Pharmacy Permit Number is subject to discipline and
19 they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order
20 below.

21 13. Respondent Dang agrees that her Pharmacist License Number is subject to discipline
22 and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary
23 Order below.

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CONTINGENCY

14. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as their Decision and Order, the Stipulated Settlement 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.

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

16. This Stipulated Settlement and Disciplinary 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 Settlement and Disciplinary 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.

17. 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 Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Permit Number No. PHY35688 issued to Respondent My Lan Pharmacy is revoked. However, the revocation is stayed and Respondent My Lan Pharmacy is placed on probation for three (3) years on the following terms and conditions:

1. Definition: Respondent

For the purposes of these terms and conditions, "respondent" shall refer to Respondent My Lan Pharmacy. All terms and conditions stated herein shall bind and be applicable to the licensed premises and to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by respondent to or before the board or its designee shall be made by an owner or executive officer with authority to act on behalf of and legally bind the licensed entity

2. 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 permit 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.

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3. 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.

4. 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.

5. 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 Entity 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.

6. 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.

1 **7. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondent, jointly and
3 severally with Respondent Dang, shall pay to the Board its costs of investigation and prosecution
4 in the amount of \$12,000. Respondent shall be permitted to pay these costs in a payment plan
5 approved by the Board or its designee, so long as full payment is completed no later than one (1)
6 year prior to the end date of probation. There shall be no deviation from this schedule absent prior
7 written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed
8 shall be considered a violation of probation.

9 **8. Probation Monitoring Costs**

10 Respondent shall pay any costs associated with probation monitoring as determined by the
11 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
12 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
13 shall be considered a violation of probation.

14 **9. Consultant Review of Pharmacy Operations**

15 During the period of probation, Respondent shall retain an independent consultant at its
16 own expense who shall be responsible for conducting an inspection to review the operations of
17 Respondent on a monthly basis for compliance by Respondent with state and federal laws and
18 regulations governing the practice of pharmacy, and compliance by respondent. During the
19 period of probation, the Board or its designee, retains the discretion to modify the frequency of
20 the inspection of the pharmacist consultant's review.

21 The consultant shall be a pharmacist licensed by and not on probation with the Board and
22 whose name shall be submitted to the Board or its designee, for prior approval, within thirty (30)
23 days of the effective date of this decision.

24 Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall
25 be considered a violation of probation.

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1 **10. Status of Permit**

2 Respondent shall, at all times while on probation, maintain an active, current Pharmacy
3 Permit Number with the Board, including any period during which suspension or probation is
4 tolled. Failure to maintain an active, current Pharmacy Permit Number shall be considered a
5 violation of probation.

6 If Respondent's Pharmacy Permit Number expires or is cancelled by operation of law or
7 otherwise at any time during the period of probation, including any extensions thereof due to
8 tolling or otherwise, upon renewal or reapplication Respondent's Pharmacy Permit Number shall
9 be subject to all terms and conditions of this probation not previously satisfied.

10 **11. Permit Surrender While on Probation**

11 Following the effective date of this decision, should Respondent cease practice due to
12 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
13 Respondent may relinquish their Pharmacy Permit Number, including any indicia of licensure
14 issued by the board, along with a request to surrender the Pharmacy Permit Number. The Board
15 or its designee shall have the discretion whether to accept the surrender or take any other action it
16 deems appropriate and reasonable. Upon formal acceptance of the surrender of the Pharmacy
17 Permit Number, Respondent will no longer be subject to the terms and conditions of probation.
18 This surrender constitutes a record of discipline and shall become a part of the Respondent's
19 license history with the Board.

20 Upon acceptance of the surrender, Respondent shall relinquish Entity pocket and/or wall
21 permit, including any indicia of licensure not previously provided to the Board within ten (10)
22 days of notification by the Board that the surrender is accepted if not already provided.
23 Respondents may not reapply for any license from the Board for three (3) years from the effective
24 date of the surrender. Respondents shall meet all requirements applicable to the license sought as
25 of the date the application for that license is submitted to the Board, including any outstanding
26 costs.

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Respondent may not apply for any new 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. Respondent further stipulates that it shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

12. Sale or Discontinuance of Business

During the period of probation, should Respondent sell, trade or transfer all or part of the ownership of the licensed entity, discontinue doing business under the license issued to Respondent, or should practice at that location be assumed by another full or partial owner, person, firm, business, or entity, under the same or a different premises license number, the board or its designee shall have the sole discretion to determine whether to exercise continuing jurisdiction over the licensed location, under the current or new premises license number, and/or carry the remaining period of probation forward to be applicable to the current or new premises license number of the new owner.

13. Notice to Employees

Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent shall submit written notification to the board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to timely provide such notification to employees, or to timely submit such notification to the board shall be considered a violation of probation.

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1 "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary
2 and relief employees and independent contractors employed or hired at any time during
3 probation.

4 **14. Owners and Officers: Knowledge of the Law**

5 Respondent shall provide, within thirty (30) days after the effective date of this decision,
6 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
7 or more of the interest in Respondent or Respondent's stock, and all of its officer, stating under
8 penalty of perjury that said individuals have read and are familiar with state and federal laws and
9 regulations governing the practice of pharmacy. The failure to timely provide said statements
10 under penalty of perjury shall be considered a violation of probation.

11 **15. Premises Open for Business**

12 Respondent shall remain open and engaged in its ordinary business as a Pharmacy in
13 California for a minimum of 120 hours per calendar month. Any month during which this
14 minimum is not met shall toll the period of probation, i.e., the period of probation shall be
15 extended by one month for each month during with this minimum is not met. During any such
16 period of tolling of probation, respondent must nonetheless comply with all terms and conditions
17 of probation, unless respondent is informed otherwise in writing by the board or its designee. If
18 Respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of 120
19 hours in any calendar month, for any reason (including vacation), respondent shall notify the
20 board in writing within ten (10) days of the conclusion of that calendar month. This notification
21 shall include at minimum all of the following: the date(s) and hours respondent was open; the
22 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on
23 which respondent will resume business as required.

24 Respondent shall further notify the board in writing with ten (10) days following the next
25 calendar month during which respondent is open and engaged in its ordinary business as a
26 pharmacy in California for a minimum of hours. Any failure to timely provide such notification(s)
27 shall be considered a violation of probation.

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1 **16. Posted Notice of Probation Premises Open for Business**

2 Respondent shall prominently post a probation notice provided by the board or its designee
3 in a place conspicuous to and readable by the public within two (2) days of receipt thereof from
4 the board or its designee. Failure to timely post such notice, or to maintain the posting during the
5 entire period of probation, shall be considered a violation of probation.

6 Respondent shall not, directly or indirectly, engage in any conduct or make any statement
7 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
8 member of the public, or other person(s) as to the nature of and reason for the probation of the
9 licensed entity.

10 **17. Violation of Probation**

11 If a Respondent has not complied with any term or condition of probation, the board shall
12 have continuing jurisdiction over respondent, and probation shall be automatically extended, until
13 all terms and conditions have been satisfied or the board has taken other action as deemed
14 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
15 to impose the penalty that was stayed.

16 If Respondent violates probation in any respect, the board, after giving respondent notice
17 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
18 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
19 probation, the board shall have continuing jurisdiction and the period of probation shall be
20 automatically extended until the petition to revoke probation or accusation is heard and decided.

21 **18. Completion of Probation**

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

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1 **IT IS FURTHER ORDERED** that Pharmacist License Number RPH 40599 issued
2 Respondent Nga Tuyet Dang is revoked, However, the revocation is stayed and Respondent Dang
3 is placed on probation for four (4) years, on the following terms and conditions:

4 **19. Obey All Laws**

5 Respondent Nga Tuyet Dang shall obey all state and federal laws and regulations.
6 Respondent Nga Tuyet Dang shall report any of the following occurrences to the Board, in
7 writing, within seventy- two (72) hours of such occurrence:

- 8 • an arrest or issuance of a criminal complaint for violation of any provision of the
9 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
10 substances laws
- 11 • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal
12 criminal proceeding to any criminal complaint, information or indictment
- 13 • a conviction of any crime
- 14 • the filing of a disciplinary pleading, issuance of a citation, or initiation of another
15 administrative action filed by any state or federal agency which involves Respondent
16 Nga Tuyet Dang's license or which is related to the practice of pharmacy or the
17 manufacturing, obtaining, handling, distributing, billing, or charging for any drug,
18 device or controlled substance.

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

20 **20. Report to the Board**

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

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

6 **21. Interview with the Board**

7 Upon receipt of reasonable prior notice, Respondent Nga Tuyet Dang shall appear in person
8 for interviews with the Board or its designee, at such intervals and locations as are determined by
9 the Board or its designee. Failure to appear for any scheduled interview without prior notification
10 to board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its
11 designee during the period of probation, shall be considered a violation of probation.

12 **22. Cooperate with Board Staff**

13 Respondent Nga Tuyet Dang shall timely cooperate with the Board's inspection program
14 and with the Board's monitoring and investigation of Respondent Nga Tuyet Dang's compliance
15 with the terms and conditions of Respondent probation, including but not limited to: timely
16 responses to requests for information by Board staff; timely compliance with directives from
17 Board staff regarding requirements of any term or condition of probation; and timely completion
18 of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall
19 be considered a violation of probation.

20 **23. Continuing Education**

21 Respondent Nga Tuyet Dang shall provide evidence of efforts to maintain skill and
22 knowledge as a pharmacist as directed by the Board or its designee.

23 **24. Reporting of Employment and Notice to Employers**

24 During the period of probation, Respondent Nga Tuyet Dang shall notify all present and
25 prospective employers of the decision in case number 6918 and the terms, conditions and
26 restrictions imposed on Respondent Nga Tuyet Dang by the decision, as follows:

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1 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
2 undertaking any new employment, Respondent Nga Tuyet Dang shall report to the Board in
3 writing the name, physical address, and mailing address of each of employer(s), and the name(s)
4 and telephone number(s) of all of direct supervisor(s), as well as any pharmacist(s)-in- charge,
5 designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s)
6 and the work schedule, if known. Respondent Nga Tuyet Dang shall also include the reason(s)
7 for leaving the prior employment. Respondent Nga Tuyet Dang shall sign and return to the Board
8 a written consent authorizing the Board or its designee to communicate with all of Respondent
9 Nga Tuyet Dang's employer(s) and supervisor(s), and authorizing those employer(s) or
10 supervisor(s) to communicate with the board or its designee, concerning Respondents' work
11 status, performance, and monitoring. Failure to comply with the requirements or deadlines of this
12 condition shall be considered a violation of probation.

13 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
14 respondent undertaking any new employment, Respondent Nga Tuyet Dang shall cause (a) direct
15 supervisor, (b) pharmacist-in-charge, designated representative-in-charge, responsible manager,
16 or other compliance supervisor, and (c) the owner or owner representative of employer, to report
17 to the Board in writing acknowledging that the listed individual(s) has/have read the decision in
18 case number 6918, and terms and conditions imposed thereby. If one person serves in more than
19 one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the Respondent
20 Nga Tuyet Dang's responsibility to ensure that these acknowledgment(s) are timely submitted to
21 the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c)
22 during the term of probation, respondent shall cause the person(s) taking over the role(s) to report
23 to the board in writing within fifteen (15) days of the change acknowledging that he or she has
24 read the decision in case number 6918, and the terms and conditions imposed thereby.

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1 If Respondent Nga Tuyet Dang works for or is employed by or through an employment
2 service, Respondent Nga Tuyet Dang must notify the person(s) described in (a), (b), and (c)
3 above at every entity licensed by the Board of the decision in case number 6918, and the terms
4 and conditions imposed thereby in advance of Respondent Nga Tuyet Dang commencing work at
5 such licensed entity. A record of this notification must be provided to the Board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of Respondent Nga Tuyet Dang undertaking any new employment by or through an
8 employment service, Respondent Nga Tuyet Dang shall cause the person(s) described in (a), (b),
9 and (c) above at the employment service to report to the board in writing acknowledging that he
10 or she has read the decision in case number 6918, and the terms and conditions imposed thereby.
11 It shall be Respondent Nga Tuyet Dang's responsibility to ensure that these acknowledgment(s)
12 are timely submitted to the board.

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

16 "Employment" within the meaning of this provision includes any full-time, part-time,
17 temporary, relief, or employment/management service position as a Pharmacist, or any position
18 for which a Pharmacist is a requirement or criterion for employment, whether Respondents are an
19 employee, independent contractor or volunteer.

20 **25. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

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

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

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1 **26. Restrictions on Supervision and Oversight of Licensed Facilities**

2 During the period of probation, Respondent Nga Tuyet Dang shall not supervise any intern
3 pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible
4 manager or other compliance supervisor of any entity licensed by the board, nor serve as a
5 consultant. Assumption of any such unauthorized supervision responsibilities shall be considered
6 a violation of probation.

7 **27. Reimbursement of Board Costs**

8 As a condition precedent to successful completion of probation, Respondent Nga Tuyet
9 Dang, jointly and severally with Respondent My Lan Pharmacy, shall pay to the Board its costs
10 of investigation and prosecution in the amount of \$12,000. Respondent Nga Tuyet Dang shall be
11 permitted to pay these costs in a payment plan approved by the Board or its designee, so long as
12 full payment is completed no later than one (1) year prior to the end date of probation. There shall
13 be no deviation from this schedule absent prior written approval by the Board or its designee.
14 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

15 **28. Probation Monitoring Costs**

16 Respondent Nga Tuyet Dang shall pay any costs associated with probation monitoring as
17 determined by the Board each and every year of probation. Such costs shall be payable to the
18 Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the
19 deadline(s) as directed shall be considered a violation of probation.

20 **29. Status of License**

21 Respondent Nga Tuyet Dang shall, at all times while on probation, maintain an active,
22 current License with the Board, including any period during which suspension or probation is
23 tolled. Failure to maintain an active, current License shall be considered a violation of probation.

24 If Respondent Nga Tuyet Dang's License expires or is cancelled by operation of law or
25 otherwise at any time during the period of probation, including any extensions thereof due to
26 tolling or otherwise, upon renewal or reapplication Respondent Nga Tuyet Dang's License shall
27 be subject to all terms and conditions of this probation not previously satisfied.

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1 **30. License Surrender While on Probation**

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

11 Upon acceptance of the surrender, Respondent Nga Tuyet Dang shall relinquish any pocket
12 and/or wall license, including any indicia of licensure not previously provided to the Board within
13 ten (10) days of notification by the Board that the surrender is accepted if not already provided.
14 Respondent Nga Tuyet Dang may not reapply for any license from the Board for three (3) years
15 from the effective date of the surrender. Respondent Nga Tuyet Dang shall meet all requirements
16 applicable to the license sought as of the date the application for that license is submitted to the
17 Board, including any outstanding costs.

18 **31. Practice Requirement – Extension of Probation**

19 Except during periods of suspension, Respondent Nga Tuyet Dang shall, at all times while
20 on probation, be employed as a Pharmacist in California for a minimum of one hundred (100)
21 hours per calendar month. Any month during which this minimum is not met shall extend the
22 period of probation by one month. During any such period of insufficient employment,
23 respondent must nonetheless comply with all terms and conditions of probation, unless
24 respondent receives a waiver in writing from the Board or its designee.

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1 If Respondent Nga Tuyet Dang does not practice as a Pharmacist in California for the
2 minimum number of hours in any calendar month, for any reason (including vacation),
3 Respondent Nga Tuyet Dang shall notify the Board in writing within ten (10) days of the
4 conclusion of that calendar month. This notification shall include at least: the date(s), location(s),
5 and hours of last practice; the reason(s) for the interruption or reduction in practice; and the
6 anticipated date(s) on which Respondent Nga Tuyet Dang will resume practice at the required
7 level. Respondent Nga Tuyet Dang shall further notify the Board in writing within ten (10) days
8 following the next calendar month during which Respondent Nga Tuyet Dang practices as a
9 Pharmacist in California for the minimum of hours. Any failure to timely provide such
10 notification(s) shall be considered a violation of probation.

11 It is a violation of probation for Respondent Nga Tuyet Dang's probation to be extended
12 pursuant to the provisions of this condition for a total period, counting consecutive and non-
13 consecutive months, exceeding thirty-six (36) months. The Board or its designee may post a
14 notice of the extended probation period on its website.

15 **32. Violation of Probation**

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

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1 If Respondent Nga Tuyet Dang violates probation in any respect, the Board, after giving
2 respondent notice and an opportunity to be heard, may revoke probation and carry out the
3 disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed
4 against Respondent Nga Tuyet Dang during probation, or the preparation of an accusation or
5 petition to revoke probation is requested from the Office of the Attorney General, the Board shall
6 have continuing jurisdiction and the period of probation shall be automatically extended until the
7 petition to revoke probation or accusation is heard and decided.

8 33. Completion of Probation

9 Upon written notice by the board or its designee indicating successful completion of
10 probation, Respondent Nga Tuyet Dang's license will be fully restored.

11 34. Remedial Education

12 Within thirty (30) days of the effective date of this decision, Respondent Nga Tuyet Dang
13 shall submit to the board or its designee, for prior approval, an appropriate program of remedial
14 education related to the causes of discipline contained within Amended Accusation No. 6918. The
15 program of remedial education shall consist of at least 10 hours per year, which shall be
16 completed at Respondent Nga Tuyet Dang's own expense. At least 50% of the hours must be live
17 in-person or live webinar. All remedial education shall be in addition to, and shall not be credited
18 toward, continuing education (CE) courses used for license renewal purposes for pharmacists.

19 Failure to timely submit for approval or complete the approved remedial education shall be
20 considered a violation of probation. The period of probation will be automatically extended until
21 such remedial education is successfully completed and written proof, in a form acceptable to the
22 board, is provided to the board or its designee.

23 Following the completion of each course, the board or its designee may require the
24 respondent, at Respondent's own expense, to take an approved examination to test the
25 Respondent Nga Tuyet Dang's knowledge of the course. If the Respondent Nga Tuyet Dang does
26 not achieve a passing score on the examination that course shall not count towards satisfaction of
27 this term. Respondent Nga Tuyet Dang shall take another course approved by the board in the
28 same subject area.

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1 I have read and fully discussed with Respondent My Lan Pharmacy, John Dung Pham,
2 Partner, and Nga Tuyet Dang, Partner/Pharmacist in Charge, and Respondent Nga Tuyet Dang,
3 Pharmacist, the terms and conditions and other matters contained in the above Stipulated
4 Settlement and Disciplinary Order. I approve its form and content.

5
6 DATED: _____

ROBERT B. YEE
Attorney for Respondents

8 **ENDORSEMENT**

9
10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Board of Pharmacy.

12 DATED: _____

Respectfully submitted,


13 ROB BONTA
14 Attorney General of California
15 CHAR SACHSON
Supervising Deputy Attorney General

16
17 CARLA L. CHEUNG
18 Deputy Attorney General
19 *Attorneys for Complainant*

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1 I have read and fully discussed with Respondent My Lan Pharmacy, John Dung Pham,
2 Partner, and Nga Tuyet Dang, Partner/Pharmacist in Charge, and Respondent Nga Tuyet Dang,
3 Pharmacist, the terms and conditions and other matters contained in the above Stipulated
4 Settlement and Disciplinary Order. I approve its form and content.

5
6 DATED: August 30, 2021


7 ROBERT B. YEE
8 Attorney for Respondents


9 ENDORSEMENT

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11 submitted for consideration by the Board of Pharmacy.

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17 CARLA L. CHEUNG
18 Deputy Attorney General
19 Attorneys for Complainant

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Exhibit A

Accusation No. 6918

1 XAVIER BECERRA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
3 CARLA L. CHEUNG
Deputy Attorney General
4 State Bar No. 291562
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-4459
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 Amended Accusation
Against:

Case No. 6918

13 **MY LAN PHARMACY,**
14 **JOHN PHAM, PARTNER**
15 **NGA TUYET DANG, PARTNER**
401 East 18th Street, Suite B
Oakland, CA 94606

AMENDED ACCUSATION

16 **Pharmacy Permit Number No. PHY 35688,**

17 **and**

18 **NGA TUYET DANG**
6420 Estates Drive,
19 **Oakland, CA 94611**
Pharmacist License No. RPH 40599

20 Respondents.
21

22
23 **PARTIES**

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

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2. On or about June 29, 1989, the Board of Pharmacy issued Pharmacy Permit Number PHY 35688 to partners John Dung Pham and Nga Tuyet Dang, doing business as My Lan Pharmacy (Respondent My Lan). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on June 1, 2021, unless renewed.

3. On or about September 24, 1986, the Board of Pharmacy issued Pharmacist License Number RPH 40599 to Nga Tuyet Dang (Respondent Dang). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2022, unless renewed.

4. From on or about May 1, 2002 to the present, Respondent Dang served and/or was listed in Board records as Pharmacist-in-Charge for Respondent My Lan.

JURISDICTION

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

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

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

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

9. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/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.

STATUTORY PROVISIONS

10. Section 4076 of the Code states:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

...

(11)(A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

...

11. Section 4081 of the Code states:

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

...

12. Section 4104 of the Code states:

...

(b) Every pharmacy shall have written policies and procedures for addressing chemical, mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy.

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13. Section 4105 of the Code states:

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

• • •

14. Section 4113, subdivision (c) of the Code states:

...

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

• • •

15. Section 4301 of the Code states:

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

...

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

...

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

...

16. Section 4307 of the Code states that:

(a) Any person who has been denied a license or whose license has been revoked 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 manager, 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:

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(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.

...

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

18. Section 11165 of the Health and Safety Code states:

...

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, and respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility, if provided.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(11) The serial number for the corresponding prescription form, if applicable.

19. Section 111295 of the Health and Safety Code states that it is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is adulterated.

REGULATORY PROVISIONS

20. California Code of Regulations, title 16, section 1707.5 states:

(a) Labels on drug containers dispensed to patients in California shall conform to the following format:

(1) Each of the following items, and only these four items, shall be clustered into one area of the label that comprises at least 50 percent of the label. Each item shall be printed in at least a 12-point sans serif typeface, and listed in the following order:

(A) Name of the patient

(B) Name of the drug and strength of the drug. For the purposes of this section, "name of the drug" means either the manufacturer's trade name of the drug, or the generic name and the statement "generic for _____" where the brand name is inserted and the name of the manufacturer. In the professional judgment of the pharmacist:

(i) If the brand name is no longer widely used, the label may list only the generic name of the drug, and

(ii) The manufacturer's name may be listed outside of the patient-centered area.

...

21. California Code of Regulations, title 16, section 1714, states:

...

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

(c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold running water for pharmaceutical purposes.

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1 22. California Code of Regulations, title 16, section 1715, states:

2 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029
3 or section 4037 of the Business and Professions Code shall complete a self-
4 assessment of the pharmacy's compliance with federal and state pharmacy law. The
5 assessment shall be performed before July 1 of every odd-numbered year. The
6 primary purpose of the self-assessment is to promote compliance through self-
7 examination and education.

8 ...

9 23. California Code of Regulations, title 16, section 1718, states:

10 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
11 Professions Code shall be considered to include complete accountability for all
12 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

13 ...

14 24. Code of Federal Regulations, title 21, section 1305.13, states:

15 (a) A purchaser must make a copy of the original DEA Form 222 for its records
16 and then submit the original to the supplier. The copy retained by the purchaser may
17 be in paper or electronic form.

18 ...

19 (e) The purchaser must record on its copy of the DEA Form 222 the number of
20 commercial or bulk containers furnished on each item and the dates on which the
21 containers are received by the purchaser.

22 **COST RECOVERY**

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

27 **FACTUAL ALLEGATIONS**

28 **May 2018 Inspection**

29 26. On or about May 25, 2018, a Board Inspector (Inspector) conducted an inspection of
30 Respondent My Lan Pharmacy. Respondent Dang was present for the inspection.

31 27. The pharmacy was extremely dirty, dusty, cluttered, and disorganized. The carpet
32 was stained and torn, a used hairbrush was placed on the medication shelves, the sink was dirty
33 and had a damp towel draped over the faucet knobs, and the counting tray was covered in powder
34 residue.

- 1 28. There were numerous expired medications mixed in with the current inventory.
- 2 29. A bathroom near the rear of the pharmacy contained numerous stacks of boxes and
3 plastic bags filled with expired medications.
- 4 30. Upon request, Respondent Dang provided the Inspector with recent invoices for
5 controlled substances and DEA Form 222(s). The DEA Form 222(s) did not include the number
6 of containers and dates received for Schedule II controlled substances.
- 7 31. Upon request, Respondent Dang was unable to provide the Inspector with recent
8 Controlled Substance Utilization Review and Evaluation System (CURES) reports. Respondent
9 admitted that she did not submit CURES reports on a weekly basis.
- 10 32. Upon request, Respondent Dang was unable to provide the Inspector with any
11 policies and procedures for addressing chemical, mental, or physical impairment, theft, diversion,
12 or self-use of dangerous drugs, for any licensed individual(s) employed by or with Respondent
13 My Lan Pharmacy.

14 **August 2019 Inspection**

- 15 33. On or about August 29, 2019, the Inspector conducted a follow-up inspection of
16 Respondent My Lan Pharmacy. Respondent Dang was present for the inspection.
- 17 34. There was a large trash can in the middle of the pharmacy dispensing area containing
18 papers, empty prescription bottles, and food waste. There were many fruit flies around the
19 garbage can and throughout the pharmacy. A step stool and the inside of a refrigerator were dirty.
- 20 35. Numerous expired medications were mixed in with the current inventory of
21 medications.
- 22 36. Upon request, Respondent Dang was unable to provide the Inspector with a current
23 Community Pharmacy Self-Assessment.
- 24 37. Upon request, Respondent Dang was unable to provide the Inspector with recent
25 CURES reports. Respondent admitted that she did not submit CURES reports on a weekly basis.

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38. Upon request, Respondent Dang was unable to provide the Inspector with invoices for controlled substances. Respondent admitted that the invoices for controlled substance were located at Respondent's home residence. Respondent's home residence is not a facility licensed by the Board.

39. The Inspector observed a stack of DEA Form 222(s), some of which omitted the number of containers and date received for Schedule II controlled substances.

40. In the will call area, there was a dispensed prescription in a container labeled without a physical product description. There were another two dispensed prescriptions in containers labeled with incorrect manufacturer information and incorrect physical descriptions.

41. Respondent Dang prepared six prescriptions for a patient during the inspection. Four of the dispensed prescriptions were labeled with the incorrect manufacturer information. Two of the dispensed prescription labels did not contain a physical description, and four of the dispensed prescription labels contained incorrect physical descriptions. All of the six dispensed prescriptions were generic medication, but the labels did not contain “generic for” statements.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Maintain Facilities)

42. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject to disciplinary action under California Code of Regulations, title 16, section 1714(c) and Code section 4301(o), in that they engaged in unprofessional conduct by failing to maintain the pharmacy, fixtures, and equipment in a clean and orderly condition, as set forth above in paragraphs 26-27, and 33-34.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Maintain Facilities)

43. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject to disciplinary action under Code sections 4301(o) and 4342(a), and Health and Safety Code Section 111295, and in that they engaged in unprofessional conduct by holding for sale adulterated drugs, as set forth above in paragraphs 26, 28-29, 33 and 35.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Defective DEA Form 222)

44. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject to disciplinary action under Code of Federal Regulations, title 21, section 1305.13(e), and Code section 4301(o), in that they engaged in unprofessional conduct by failing to record on their DEA Form 222(s) the number of containers received and the dates received for Schedule II controlled substances, as set forth above in paragraphs 26, 30, 33, and 39.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Make Timely CURES Report)

45. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject to disciplinary action under Health and Safety Code, section 11165(d), and Code sections 4301(j) 4301(o), in that they engaged in unprofessional conduct by failing to make timely reports to the Department of Justice Controlled Substance Utilization Review and Evaluation System (CURES) regarding controlled substances, as set forth above in paragraphs 26, 31, 33, and 37.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Have Written Policies and Procedures)

46. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject to disciplinary action under Code sections 4104(b) and 4301(o), in that they engaged in unprofessional conduct by failing to have written policies and procedures in place for addressing chemical, mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy, as set forth above in paragraphs 26 and 32.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Failure to Complete Self-Assessment)

3 47. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject
4 to disciplinary action under California Code of Regulations, title 16, section 1715, and Code
5 section 4301(o), in that they engaged in unprofessional conduct by failing to timely complete a
6 self-assessment of the pharmacy's compliance with federal and state pharmacy law, as set forth
7 above in paragraphs 33 and 36.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct – Failure to Retain Records on Licensed Premises)

10 48. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject
11 to disciplinary action under Code sections 4081, 4105(a), 4310(o), and 4332, in that they engaged
12 in unprofessional conduct by failing to retain all records or other documentation of the acquisition
13 and disposition of dangerous drugs and dangerous devices on the licensed premises in a readily
14 retrievable form, open to inspection by authorized officers of the law at all times during business
15 hours, as set forth above in paragraphs 33 and 38.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct – Failure to Meet Labeling Requirements)

18 49. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject
19 to disciplinary action under California Code of Regulations, title 16, section 1707.5(a)(1)(B), and
20 Code sections 4076(a)(11)(A) and 4310(o), in that they engaged in unprofessional conduct by
21 dispensing prescriptions labeled with missing or incorrect physical descriptions, and/or incorrect
22 manufacturer name, and missing a “generic for” statement, as set forth above in paragraphs 33
23 and 40-41.

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October 2017-December 2020 Board Audit

50. On or about December 4, 2020, the Board received information from Humana Insurance regarding a wholesale invoice audit they performed for Respondent My Lan. The Board subsequently conducted its own audit of Respondent My Lan's acquisitions and dispositions of sixteen dangerous drugs between approximately October 24, 2017, and December 18, 2020, which revealed the following variances:¹

Drug Description	Beginning Inventory	Acquisition Total	Disposition Total	Variance
Amlodipine 5mg tablets	0	37,490	19,689	17,801
Aripiprazole 15mg tablets	0	60	1,365	-1,305
Atorvastatin 40mg tablets	0	30,890	10,860	20,030
Colcrys 0.6mg tablets	0	200	640	-440
Durezol 0.05% eye drops 5ml bottle	0	1	5	-4
Epinastine 0.05% eye drops 5ml bottle	0	5	6	-1
Januvia 50mg tablets	0	1,800	1,305	495
Mycophenolate 500mg tablets	0	2,500	4,290	-1,790
Neomycin/polymyxin/HC Ear suspension 10 ml bottle	0	163	46	117
Omeprazole DR 20mg capsules	0	3,000	13,230	-10,230
Pataday 0.2% eye drops 2.5 ml bottle	0	0	10	-10
Pravastatin 80mg tablets	0	3,060	3,278	-218
Prazosin 5mg capsules	0	270	2,670	-2,400
Symbicort 80-4.5mcg 10.2ml inhaler	0	33	134	-101
Tamsulosin 0.4mg capsules	0	3,600	15,210	-11,610
Voltaren 1% gel 100 gram tube	0	0	31	-31

¹ A positive variance indicates that acquisitions of wholesale inventory exceeded dispositions. A negative variance indicates that dispositions exceeded wholesale inventory acquired.

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NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Retain Records)

51. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject to disciplinary action under Code sections 4081 and 4301(o), and California Code of Regulations, title 16, section 1718, in that they engaged in unprofessional conduct by failing to retain all records or other documentation of the acquisition and disposition of dangerous drugs on the licensed premises in a readily retrievable form, resulting in unaccounted for variances in current inventory, as set forth above in paragraph 50.

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Retain Records)

52. Respondents Nga Tuyet Dang and My Lan Pharmacy are each and severally subject to disciplinary action under Code section 4301(o), and California Code of Regulations, title 16, section 1714(b), in that they engaged in unprofessional conduct by failing to ensure that drugs are safely and properly prepared, maintained, secured and distributed, resulting in unaccounted for variances in current inventory, as set forth above in paragraph 50.

OTHER MATTERS

53. Pursuant to section 4307 of the Code, if discipline is imposed on Pharmacy Permit Number PHY 35688, issued to Respondent My Lan Pharmacy, John Pham, Partner, and Nga Tuyet Dang, Partner/ Pharmacist in Charge, Respondent My Lan shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 35688 is placed on probation or until Pharmacy Permit Number PHY 35688 is reinstated if it is revoked.

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54. Pursuant to section 4307 of the Code, if discipline is imposed on Pharmacy Permit Number PHY 35688 issued to Respondent My Lan Pharmacy, John Pham, Partner, and Nga Tuyet Dang, Partner/ Pharmacist in Charge, while Respondent Dang has been an officer or owner and had knowledge of or knowingly participated in any conduct for which the license was disciplined, Respondent Dang shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 35688 is placed on probation or until Pharmacy Permit Number PHY 35688 is reinstated if it is revoked.

55. Pursuant to section 4307 of the Code, if discipline is imposed on Pharmacy Permit Number PHY 35688 issued to Respondent My Lan Pharmacy, John Pham, Partner, and Nga Tuyet Dang, Partner/ Pharmacist in Charge, while John Pham has been an officer or owner and had knowledge of or knowingly participated in any conduct for which the license was disciplined, John Pham shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 35688 is placed on probation or until Pharmacy Permit Number PHY 35688 is reinstated if it is revoked.

56. Pursuant to section 4307 of the Code, if discipline is imposed on Pharmacist License Number RPH 40599 issued to Respondent Dang, Respondent Dang shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 40599 is placed on probation or until Pharmacist License Number RPH 40599 is reinstated if it is revoked.

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 35688, issued to My Lan Pharmacy, Nga Tuyet Dang, Partner/Pharmacist in Charge;
2. Revoking or suspending Pharmacist License Number RPH 40599, issued to Nga Tuyet Dang, Pharmacist;

1 3. Prohibiting Respondent My Lan from serving as a manager, administrator, owner,
2 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
3 Number PHY 35688 is placed on probation or until Pharmacy Permit Number PHY 35688 is
4 reinstated if it is revoked;

5 4. Prohibiting Respondent Dang from serving as a manager, administrator, owner,
6 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
7 Number PHY 35688 is placed on probation or until Pharmacy Permit Number PHY 35688 is
8 reinstated if it is revoked;

9 5. Prohibiting Respondent Dang from serving as a manager, administrator, owner,
10 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
11 Number RPH 40599 is placed on probation or until Pharmacist License Number RPH 40599 is
12 reinstated if it is revoked;

13 6. Ordering My Lan Pharmacy and Nga Tuyet Dang, jointly and severally, to pay the
14 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3; and,

16 7. Taking such other and further action as deemed necessary and proper.

17
18 DATED: February 17, 2021

Signature on File

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

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