

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

In the Matter of the Accusation Against:

SAMUEL JINSUK YANG, Respondent

Intern Pharmacist License No. INT 36865

Agency Case No. 6869

OAH No. 2020021038

and

In the Matter of the Statement of Issues Against:

SAMUEL JINSUK YANG, Respondent

Pharmacist License Applicant

Agency Case No. 6883

OAH No. 2020021039

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 15, 2020.

It is so ORDERED on September 15, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", is written over a light gray rectangular background.

By

Greg Lippe
Board President

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PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 15 and 16, 2020.¹

Steve J. Pyun, Deputy Attorney General, Department of Justice, State of California, represented complainant, Anne Sodergren, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Kevin C. Murphy, Esq. and Heather A. Melone, Esq., Murphy Jones, APC, represented respondent Samuel Jinsuk Yang.

The matter was submitted on July 16, 2020.

¹ In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in place; and in order to protect the health and safety of all public and OAH personnel, this matter was held by videoconference.

FACTUAL FINDINGS

Background

1. On September 30, 2015, the board issued Intern Pharmacist License Number 36865 to respondent. That license was cancelled on May 31, 2020. There is no history of discipline imposed against the license.

2. On May 30, 2019, the board received respondent's Pharmacist Examination for Licensure Application. On November 19, 2019, the board denied the application based on evidence that respondent downloaded and shared a file containing questions from the California Practice Standards and Jurisprudence Examination for Pharmacists (CPJE). Respondent requested an administrative hearing.

3. On December 20, 2019, complainant signed the Accusation alleging respondent knowingly obtained a document containing unauthorized reproductions of test questions obtained from the CPJE and shared this document with two other individuals. As causes for discipline, complainant alleged respondent subverted a license examination (first cause for discipline); committed dishonest conduct (second cause for discipline); engaged in examination misconduct (third cause for discipline); and committed conduct warranting the denial of a license (fourth cause for discipline).² Complainant seeks the revocation of respondent's license and recovery of investigation and enforcement costs.

² At hearing, complainant amended the accusation by interlineation, without objection, at paragraph 19 by striking the citation to Business and Professions Code section 480 subdivisions (a)(2) and (a)(3)(A) (which was repealed effective July 1, 2020), and replacing it with a citation to Business and Professions Code section 496.

4. On February 18, 2020, complainant signed the Statement of Issues alleging three causes to deny respondent's pharmacist license application based on acts involving dishonesty (first cause for denial); acts warranting revocation (second cause for denial); and subversion of a licensing examination (third cause for denial).³

5. The cases were consolidated for hearing; this hearing followed.

Complainant's Evidence

TESTIMONY AND REPORT BY SUPERVISING INSPECTOR ANTONY NGONDARA

6. Antony Ngondara is a Supervising Inspector for the board who prepared an investigation report dated November 11, 2019. His testimony and the report are summarized as follows: After Ngondara obtained his Doctor of Pharmacy from Temple University, he became licensed in California and worked for four years as a pharmacist-in-charge at a retail pharmacy. He was hired by the board as an Inspector in 2012. He was promoted to Supervising Inspector in 2014, and currently supervises a team of inspectors who conduct proactive investigations into prescription drug abuse. In addition to on-the-job training, he attended the National Certified Investigator and Inspector Training (NCIT). During his time at the board, he has conducted between 100 and 150 investigations.

7. Applicants for a California pharmacist license must take and pass the CPJE in addition to the North American Pharmacist Licensure Examination (NAPLEX). The CPJE consists of multiple choice questions that test clinical competency and

³ At hearing, complainant amended the Statement of Issues by interlineation, without objection, by striking the first and second causes for discipline based on statutory changes effective July 1, 2020.

knowledge of pharmacy laws. The board administers the test through an examination contractor, PSI, Inc. The questions are created and vetted through a committee, and each examination contains unscored questions that are evaluated for future use. The exam is offered at multiple times during the year. Because there are limited number of approved test questions, each examination has questions that were used in previous examinations.

8. Because of the limited universe of test questions, the confidentiality of the exam is of utmost importance. California Code of Regulations, title 16, section 1723.1 provides that examination questions are confidential and any license applicant who conveys or exposes all or part of any qualifying examination to any other person may be disqualified as a candidate for a license. On May 22, 2019, respondent signed an Examination Security Acknowledgement. The document stated that there are multiple laws and regulations that govern exam security and confidentiality; it is a misdemeanor to compromise a licensing examination; and the board may deny a license if the applicant has compromised or attempted to compromise an examination. The document provided examples of compromising an exam, including: removing materials from a test site; aiding by any means the reproduction of any portion of the actual exam; paying or using professional exam takers to reconstruct any portion of the exam; and selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered licensing exam.

9. On July 25, 2019, respondent took the CPJE. Prior to taking the test, respondent signed a registration form stating he would maintain the confidentiality of the test.

10. On September 1, 2019, the board received an anonymous email⁴ alleging the following: “many of those who took the CPJE in July were dishonest,” they memorized the question and answer choices, and they shared a list of actual questions with their friends. The sender claimed to have names of individuals and a file they had been sharing. Complainant assigned Ngondara to investigate the allegations. Ngondara replied to the sender and requested further information. In response, on September 9, 2019, the sender provided a PDF file containing CPJE test questions.

11. Ngondara provided the file to PSI’s Director of Psychometrics, who linked 97.7 percent of the listed items in the file to an exam that was administered for a portion of July 2019.

12. Ngondara queried the sender for additional information about the exam compromise. In an email on September 12, 2019, the sender said the file had been shared with many students at Western University of Health Sciences and Loma Linda University (LLU). The sender wrote that he/she did not know who memorized the questions and answers but saw people sharing the file. Respondent was one of three named individuals with whom the file had been shared. The sender eventually provided Ngondara with the identity of the person who sent the sender the file; that person was not respondent.⁵ Ngondara has been unable to obtain the identity of the anonymous sender, although efforts are being made to locate the identity.

⁴ Respondent did not object to the email as “administrative hearsay,” and it was received with that qualification. (Gov. Code, § 11513, subd. (d).)

⁵ The name of the individual was withheld as it involves an ongoing investigation.

13. The board released a statement on September 18, 2019, stating that the CPJE had been compromised and exam results would not be released until further notice.

14. On September 22, 2019, Ngondara and Inspector Steven Kyle travelled to a Rite Aid pharmacy in Loma Linda where respondent was working as an intern pharmacist. Ngondara and Kyle introduced themselves to the pharmacy staff. Ngondara picked up a "regulatory box" where the pharmacy placed certain paperwork to be available during an inspection. The box contains information that is needed to complete an inspection report, which is customary for an inspector to leave at the pharmacy following a visit. Ngondara generated an inspection report after his visit. The report was not included with the investigation report because it contained no information relevant to the investigation of CPJE cheating.

15. The inspectors spoke to the pharmacist-in-charge and a pharmacy technician before interviewing respondent. The interview began in the immunization room but later moved to the manager's office because patients needed immunizations. The interview lasted from approximately 10:30 a.m. to 2:15 p.m. Ngondara took notes of the interview on his laptop. Before the interview, he had prepared a basic outline of the questions he intended to ask. The following day, he reviewed and organized his notes from the interview and sent them to Kyle, who added additional notes, which were indicated by a different typeface.⁶ Ngondara summarized relevant portions of the notes for his investigation report.

⁶ Both sets of notes were received as evidence. (Evid. Code, § 1120; Gov. Code, § 11513, subd. (d).)

16. Ngondara began the interview by asking respondent about his background, schooling, and activities. He also asked about respondent's study habits and whether he had a study group. Respondent said he studied with several individuals. The interview then turned to the exam compromise. Respondent stated that he had received the letter from the board indicating that the exam had been compromised and results delayed. Ngondara asked respondent if he had any information about any level of compromise of any exam questions. Respondent began to speak vaguely, and Ngondara repeated his question multiple times. They also shared with him the definition of "compromise" contained in the Pharmacy Law. Respondent said that exam candidates spoke to each other about the exam, and this was normal. Respondent's friend, Helen Rhee, took the exam before he did. He and Rhee spoke on the telephone while she was driving back home from the test site. The test questions came up during the conversation; this was not, however, the reason why she called. In fact, she did not call immediately after taking the test, but instead at some point during the course of a three-hour drive home. Respondent recalled discussing a question involving compounding formula logbooks and the answer choices, which respondent commented was confusing because all of the answer choices were similar. Ngondara asked if he recalled any other questions discussed with Rhee. Respondent said he recalled a question about medication a person could not take with food and another question involving the drug modafinil. Respondent emphasized that it was normal for students to discuss the exam and everyone did it. He said that the board should change the format of the exam if it did not want people discussing it.

17. The inspectors provided respondent with a copy of the Examination Security Acknowledgement he signed as well as various Pharmacy Law provisions. The inspectors explained that his cooperation would be viewed favorably. They then asked

if respondent had a file with CPJE questions. Respondent said he did not because he deleted it after taking the CPJE. Respondent said he did not create the file. It was a Microsoft Word document he downloaded in mid-July. The file contained approximately 50 CPJE questions. Respondent said it appeared the file was created from memorization. He received the file from Eunsi Eum, who was in respondent's pharmacy class at LLU. Respondent speculated that she received it from someone at her residency program in Long Beach. Respondent received the file from a texting/messaging application (app) called KaKao. Respondent sent the file to Anthony Sung Jin Joo, who was in Los Angeles at the time, and David Sur, who was present with respondent at the time. Both Joo and Sur were students with respondent at LLU. Respondent did not know where the file originated, but it was not from LLU.

18. Respondent emphasized he did not buy or sell the file. He estimated that by the time he took the exam, he added to the original 50 questions to amass a total of 80 to 90 questions. Respondent was reluctant to provide all the names of the individuals involved, but identified another individual who shared photos of pages of CPJE questions. He estimated 10 photos were exchanged over the KaKao app.

19. Respondent agreed to show the investigators the KaKao app on his phone. However, there were no documents or conversations related to the CPJE. Respondent said that the conversation history is only saved for so long.

20. Respondent said he deleted the file after taking the CPJE but before taking the NAPLEX. Respondent said he did not want to be involved with it anymore. Respondent mentioned again that he was one of many students who received the file, but admitted it made him feel uneasy to possess the file. Respondent admitted that using the file gave him an advantage on the CPJE. He felt that he was fortunate because people had been sharing information for years, but the CPJE was still very

hard to pass. He reiterated that he did not pay for or sell the file, or bribe anyone to obtain it. Ngondara asked if respondent recognized many questions on the actual exam that were in the file. Respondent said the majority of the questions were on the exam, but the manner in which the questions were asked was not exactly the same. Respondent said that a lot of students at LLU had the file, but he did not provide it to those individuals. Toward the end of the interview, respondent began referring to the file as a "test bank." Ngondara requested that respondent attempt to recover the deleted file and to notify him if it was successful. Respondent agreed to do so.

21. Ngondara testified that respondent was cooperative and cordial throughout the interview. His English was proficient and Ngondara had no impression that respondent could not understand the questions or was in any way confused about what was being discussed. At one point, respondent asked what the word "compromised" meant. During the interview, Ngondara provided definitions for as the words "compromised," "mitigation," and "subvert." The purpose of giving the definitions was to be clear about what the inspectors meant with regard to certain questions. Ngondara believed that respondent was fully cooperating in the investigation. Ngondara was prepared to inform the board's executive officer that his cooperation was a strong mitigating factor.

22. On October 7, 2019, Ngondara sent respondent an email which summarized of the information respondent had conveyed to him during the interview. Ngondara included a link for recovering deleted files from the KaKao app and requested that respondent attempt to retrieve the files. He also requested phone records for the time that he had the conversation with Rhee on her drive home from the test.

23. On October 7, 2019, respondent replied to the email, stating that he told Ngondara all that he knows during the interview, he “felt very emotionally stressed,” and he felt that he was being interrogated. Respondent wanted to “clarify” what he had said during the interview. The following summarizes what respondent claimed to have told Ngondara during the interview:

First, respondent heard of people making documents of test questions and sharing it with friends. The only document respondent ever made was for his own study purposes. When Ngondara asked if respondent remembered any test questions, respondent told Ngondara that while studying he came across a couple of test questions that “overlapped,” i.e., that were similar to or the same as questions on the examination itself. Respondent also told Ngondara that “we” gather information from different sources - questions people ask on the RxPrep website, Facebook groups, other forums, and things said by upperclassmen. Respondent told Ngondara that he uses KaKao and has sent many files to many people using the app. He showed Ngondara the messages he sent to Joo and Sur that day. Finally, respondent told Ngondara that he talked with Rhee after the exam, but respondent clearly told Ngondara that they did not discuss any questions. He simply asked her how the exam was and told her she would pass because she was worried she might fail the exam. Respondent did not even remember what else was discussed. Respondent said Ngondara was wrong about him receiving test questions from Eum, “[I] clearly remember telling you that we discussed about questions that we hear and see from different sources. [A]gain, I told you that the only document that I had was my own study guide and we discussed about it together.”

Respondent concluded that he was very frustrated that Ngondara “understood what I told you in this manner.” He did not respond to Ngondara earlier because he

already told him that he did not have anything to offer. Respondent was shocked about receiving Ngondara's email because he told Ngondara numerous times that he was confused and asked numerous times why they came to his work to discuss this, to which Ngondara never gave a reply. None of his classmates would be involved in cheating. He really thought Ngondara needed his help because he had good class standing and was involved in multiple organizations. He told Ngondara everything he knew and was sad that Ngondara had accused him of wrongdoing.

24. On October 15, 2019, Ngondara replied, requesting a meeting in order to clarify the differences between Ngondara's and respondent's summaries of the interview as reflected in their email exchange. On October 18, 2019, the board sent respondent a letter with instructions for scheduling an interview.

25. Ngondara received numerous emails from respondent's counsel requesting a second interview. On October 21, 2019, respondent's counsel sent Ngondara a letter requesting an investigation summary pursuant to Business and Professions Code section 800, subdivision (c)(1). Ngondara testified that his superiors instructed him not to conduct a second interview.

26. Ngondara was asked extensive questions about the interview on cross-examination. Ngondara did not recall using the term "audit" when introducing himself to the pharmacy staff. He did not inform respondent or the pharmacy staff the true purpose of his visit, which was to investigate CPJE cheating. Ngondara did not believe that this was deceitful; later in the interview the topic turned to CPJE cheating and respondent clearly understood what they were talking about. Ngondara did not request to record the interview. He explained that it is generally board policy not to record investigative interviews and he has never done so. He did not advise respondent of his *Miranda* rights. He did not advise respondent that he could have an

attorney present during questioning. He did not advise respondent that he was free to leave the interview, although he was in fact free to leave at any time. In his original, unedited notes, Ngondara noted that respondent attended church on Sunday. Ngondara testified that this was an error, because as a Seventh Day Adventist, respondent attends church on Saturday. This mistake was not included in the edited notes. Despite this error, Ngondara believes that his notes accurately reflect the substance of the interview. Ngondara never showed respondent the document containing test questions he received from the anonymous source or informed him about the anonymous email.

Ngondara interviewed all of the people respondent identified. LLU had sent out an email advising its students that it would provide legal representation for any student being interviewed by the board. All of the individuals Ngondara interviewed denied any wrongdoing or having received or sent any files containing test questions. Ngondara did not include their statements in his investigation report.

TESTIMONY OF STEVEN KYLE

27. Steven Kyle has been a board inspector since 2014 and is assigned to the prescription fraud abuse team. He graduated from pharmacy school in 1996 and worked in retail pharmacies before joining the board. Kyle accompanied Ngondara on the interview with respondent. He took his own notes during the interview. The next day, he reviewed Ngondara's notes and confirmed they accurately recorded what transpired during the interview. He also added a few additional items he recalled. He shredded his own notes as is his custom and practice when they are no longer needed. His testimony was consistent with that of Ngondara's testimony, the investigation report, and Ngondara's notes regarding the interview. He did not believe that

respondent was in any way confused about what was being asked. Instead, he confirmed that respondent was very cooperative and helpful, albeit reluctant at times.

On cross-examination, Kyle denied that he had already prejudged respondent's guilt before going to the interview. He was asked about an addition he made to Ngondara's notes, indicating the font-type respondent regularly used was Cambria. In Ngondara's original notes, Ngondara indicated that Calibri is the default font that respondent uses. Kyle admitted that the Cambria was in error and the font-type was Calibri.

Respondent's Evidence

RESPONDENT'S TESTIMONY

28. Respondent's testimony is summarized as follows: Respondent is 30 years old. He moved to the United States from South Korea in 2003. Both of his parents are pharmacists. His wife recently graduated from pharmacy school as well. He attended LLU's School of Pharmacy and graduated in 2019 with a 3.7 grade point average. In school, he was very active with student groups and was class vice president. He was a paid intern at Rite Aid starting in December 2016, but he was terminated in January 2020 when he was served with the Accusation. His district manager informed him that he should contact her for re-hire if he gets licensed. He is also very involved in the Seventh Day Adventist Church and has gone on a number of missions over the years.

29. While he was in pharmacy school he had a group of friends who studied together, Joo, Sur, and Eum. He never studied with Rhee. After graduation respondent studied by himself. He started studying for the CPJE in May 2019. He studied 8 to 10 hours per day. His father, a pharmacy professor, would ask him questions about

pharmacy topics during meals. The only study material he used was the “RxPrep,” a commercial test preparation book which contained a CPJE section. These were provided by his school. RxPrep also had online lectures and tests and a Facebook group page for the CPJE. The CPJE includes a lot of clinical material so he studied the clinical portion of the RxPrep material. He took handwritten notes and copied down questions and answers and concepts he got wrong multiple times. RxPrep provided a number of sample questions. There were also a number of questions on the Facebook page that people uploaded if they did not know the answer. If a question was difficult or he needed clarification, respondent wrote it down in his notes.

30. Respondent never used unauthorized materials. He never received a file from anyone alleging to be actual CPJE questions. He created his own notes and files that had questions he thought were hard and wanted to study more. He created handwritten study notes.⁷ Respondent did create a computer file with questions he did not understand or that he thought were hard. He compiled these into a document, which was a study strategy he heard about that focused on studying what he did not know, instead of what he already did know. When asked if that file contained actual CPJE questions, his response was, “No, there was no – I didn’t compile those knowing it was, you know, nothing was actual CPJE – quite labeled CPJE questions, I had no idea.” Based on this response, he was asked to clarify if there were actual CPJE questions in the file. He responded that there were no actual CPJE questions in the file. He never shared anything with Joo or Sur. He did not share his Word document with anyone. In the course of studying with them, he asked them about questions he did not understand, but he never sent an electronic file to anyone.

⁷ Respondent submitted photographs of his study notes.

31. Respondent took the CPJE on July 25, 2016. Respondent does not know when Eum took the exam, only that she took it before he did. Respondent denied receiving anything from her after her exam. Eum did provide him with her notes of medical equations when they were studying as a group. He does not find other people's notes helpful to him, the only thing that is useful are actual equations.

32. Respondent had a phone conversation with Rhee on July 22, 2019. When respondent called her, he did not know she had taken the CPJE that day. He called to check on how her residency in Stockton was going because she did not know anyone. After discussing her residency, she mentioned she took CPJE that day. Respondent did not discuss any CPJE questions. When respondent heard she took it, he asked how it was, and she told him it was hard. She was worried she would not be able to pass the exam and "extra" worried that this would cause concern with her residency program. They never discussed any actual CPJE questions on her exam. They did not discuss any details, including names of drugs. They did not discuss the drug modafinil. On cross examination, respondent explained that he never told the inspectors during the interview (because he was not asked) that he had been unaware when he called Rhee that she had taken the CPJE that very day. It was just a "basic conversation."

33. When the inspectors came to his work at Rite Aid, respondent thought it was a general audit. They interviewed the pharmacist and technician, and respondent believed he was being interviewed because he was working that day. The interview started in the immunization room, but they then moved to the manager's office. Initially the inspectors' demeanor was "very casual and chill." Later in the interview they were very aggressive and asking him "all these questions." He did not know why, but it looked like they were accusing him of something. They never told him of his right to remain silent, a right to an attorney, that he was free to leave, and did not

have to answer questions. Respondent did not feel that he was free to leave. He thought he was providing general information related to the inspection. They were laughing and joking, and then all of a sudden, they said they already knew the answers and were just testing him on his honesty. Respondent wondered why they were there and felt he was lied to. They asked about the CPJE compromise but they never told him why they were asking. The only thing they emphasized was that his cooperation was very important and if he did not cooperate, there might be a bad result. He stated, "I was very scared and confused because I didn't know anything but I felt I had to give them everything I knew" because they emphasized cooperation. He repeated that he did not know what they were asking, and he then became scared because they presented his signature on legal documents. He kept asking if he cooperated because he thought not cooperating in an investigation was an offense. Respondent repeated several times he was scared; he did not know who to get help from. The inspectors never showed him a digital file or printout alleging to be CPJE questions. They never asked him about an alleged digital file with CPJE answers. They never informed him that they had an anonymous email mentioning respondent.

34. Respondent never discussed actual CPJE questions. He only discussed material that everyone had access to. Respondent studied off RxPrep and all he did was write down questions he did not understand. The inspectors never differentiated between actual CPJE questions and other sample questions. Respondent felt "lost," and if they had made clear to him what they were asking, he could have clarified. But he was thinking to himself the whole time, "Why are they here?" Respondent has since passed the NAPLEX well above the minimum passing score.

35. Respondent did mention the drug modafinil during the interview. He explained the inspectors wanted him to remember any questions that involved the

specific name of a drug. The interview was approximately two months after his test, so he gave them the name modafinil because he thought it came up on his exam. He never told the inspectors that he discussed modafinil with Rhee during their phone conversation.

36. Respondent deleted the Word file after taking the CPJE. He was organizing his computer desktop space, and deleted that file and other files of notes he created. He deleted all his computer generated files because he tried a different method of test preparation, but creating computer notes did not help him. He learns best when he writes the information by hand. He stopped adding to the file halfway through his studies because it was not helping him. He deleted it because he did not need it.

Respondent told the inspectors that he deleted the Word file "because he did not want to be involved with it anymore" because he "just wanted to get out of the conversation." He stated:

I was scared, I was confused, I didn't know what they were asking, but as more as I was thinking I felt that I was scared So when they were asking about those kind of questions, I just said I wanted to – I didn't want to do it anymore- I wanted to let them know I'm innocent and had nothing to do with anything. When I understood they were accusing me of something, every question they asked I tried to defend myself, I tried to say I had nothing to do with it, I tried to make them understand that, you know, I had nothing to do with it. I'm sorry if they understand me any

different, but that was the best word I could come up with my mouth at that moment.

The inspector asked him if he had an advantage in having the file, to which he responded, "Yes," because the whole purpose of studying is to get a question right. In that regard, he had an advantage because he studied and that in itself is an advantage. However, he did not have an illegal, or unfair, advantage.

With regard to his statement to the inspectors that he felt he may have done something wrong, respondent explained that he told the inspectors that he had gathered some of the information from questions asked on forums or the Facebook page. After the test he realized some of the questions on the test were very similar, or the same, as questions people were asking on the forums and Facebook pages. Respondent felt confused about how the people on the forums knew the test questions. However, everyone could have access to the forums, "so in that sense, I thought anything could be wrong, just viewing those, I didn't know if it was test question or not, but viewing those could get me into trouble." The inspectors asked if he felt "uneasy" about it and he responded, "yes."

37. When the inspectors asked to see the messages he sent his friend, he was happy to open his phone and show him conversations he had with Eum, Sur, and Joo. He opened the chatting history and showed them everything.

38. Inspectors questioned his study group members and they were all able to retake the CPJE exam. They have all since been licensed by the board. Respondent was aware that Rhee was investigated but she was allowed to retake the exam and has also been licensed.

39. Respondent was asked about his knowledge of CPJE cheating at the time of his interview. Respondent heard a lot of rumors about the CPJE. He heard that people memorized questions from their exam and shared that information. He heard that someone at a school in northern California organized a file, and an ex-girlfriend reported this to the board after the two broke-up. He also heard rumors about people cheating on the test. He came across another case where an exam taker was caught taking materials from the testing site.

40. In conclusion, respondent testified that he is "sad, scared, and pissed-off" that the Accusation is on the board's website. He worries this will affect his ability to obtain employment in California. He has no idea why he is the only one who is suffering when all he tried to do was be helpful, honest, and cooperative with the inspectors. He has no idea why they were interviewing him because they refused to tell him. All he is asking for is the opportunity to retake the CPJE to prove he is more than capable of passing the exam.

41. On cross-examination, respondent admitted that he understood the questions that the inspectors were asking; he did not, however, understand why they were asking him questions about the CPJE. Respondent deleted the Word document he created because it did not help him study. In fact, while he was studying, he stopped taking notes on the computer because it was not helping him. Thus, he had no reason to keep the Word document and deleted it. He did so after he took the CPJE but before he received notice that the CPJE exam results were being withheld. When asked why he would delete his study files before knowing whether he had passed the CPJE, he said he did not need the files anymore because he already had the information that he wrote in hand. When asked if he attempted to recover this

document from the "recycle bin," respondent said he did a "shift delete" so that it was permanently deleted and not sent to the recycle bin.

42. After taking the CPJE, he realized some of the questions on the exam were very similar to questions posed on the social media sites he visited. When asked if his Word document contained questions similar to those on the actual CPJE, respondent answered,

I compiled a lot of information to my question-bank document and then that included some questions that was [sic] from other people that were asking on the forums and then there were some questions that were very similar to those questions that people asked. I never knew before I took my exam, I only realized after I took my exam, "How did those people know? How did these people ask these questions?" These were almost similar or identical to the actual exam questions.

Viewing those questions after the fact made respondent feel uneasy. When asked again why he would have deleted helpful material before knowing whether he passed the exam, respondent said, "I didn't think that way."

43. During his interview with the board inspectors, respondent never asked for a break or requested to leave. Instead, he kept trying to end the conversation and go back to work, although he never told this to the inspectors. He tried to end the conversation by saying, "I'm scared, why am I here?" He did not feel that he could freely leave during the interview.

44. Respondent initially testified that he did not talk Joo or Sur about this case until he obtained his attorney who contacted them. When asked if he felt that he should let Eun, Rhee, Joo, or Sur know that he had given their names to the board inspectors, respondent said he did not feel that way, because he did not feel he had done anything wrong. He was glad when the board requested interviews with his friends because he thought the board would do a follow-up with him, and he could have a second chance of explaining everything. The fact that his friends were involved would be better for him because "we didn't do anything." Once respondent got the email from the dean, he initially testified that he did not tell anyone that he had already been interviewed by the board. When asked why he did not talk to his friends, he said he felt "sorry" for them. When pressed whether he thought it would have been helpful to tell his friends Eun, Joo, and Sur that he had already been interviewed, respondent stated only that Rhee and Eun had already been interviewed. He then said that the inspectors told him not to discuss the case with anyone. He then testified that he told Eun that he too had been interviewed and that he mentioned her name as being in his study group. Respondent then testified he also told Sur that he had been interviewed after receiving the dean's email.

TESTIMONY OF ANTHONY SUNG JIN JOO

45. Anthony Sung Jin Joo testified at hearing and prepared a declaration. His testimony and the declaration are summarized as follows: Joo and respondent were in the same class in pharmacy school. Respondent was a pretty good student, one of the top performers in class. He had good attendance and participated a lot in class. He was well respected by his classmates. Joo and respondent sometimes studied together. Joo has no reason to question respondent's character. He has strong clinical knowledge and is passionate about his career.

46. Joo was interviewed by board inspectors regarding CPJE cheating. Joo and his classmates had received a letter from the Dean of the LLU Pharmacy School stating that board inspectors were interrogating students, and the University would provide free legal counsel to attend interviews if desired.⁸ However, the school made clear that the attorney would not represent them if they had anything to do with the cheating. The inspectors interviewed Joo with the counsel provided by the school in November 2019. The interview lasted 15 to 20 minutes. The inspectors did not ask him any questions specifically about respondent. Joo denied ever receiving any documents from anyone regarding the CPJE. After the interview, Joo was granted authorization to retake the examination. He retook the exam and passed on the third attempt. He has since been licensed.

47. Joo did not learn that respondent had been interviewed by the board until after Joo was interviewed in November. He spoke to respondent who said his attorneys would be calling him. Respondent did not provide him with many details, only that it involved a cheating scandal. He learned of the precise allegations by reading the Accusation online.

⁸ The attached email by Dean Michael Hogue dated October 23, 2019, stated he was aware some graduates "have been subjected to what appears to be unwarranted, unfounded interrogations by members of the Board of Pharmacy." He advised that any interview or interrogation should be conducted with legal counsel. The Dean offered to provide any graduate who was being interviewed regarding the CPJE with legal counsel at no cost in order to help graduates who were "being intimidated or wrongly accused of matters related to the CPJE." He cautioned, however, "If you broke the law, then we can't help you." Thus, he requested those who believed they were "wrongly accused or targeted and interrogated without cause" to contact him.

TESTIMONY OF DAVID SUR

48. David Sur testified at hearing and prepared a declaration. His testimony and the declaration are summarized as follows: Sur and respondent were classmates and friends in pharmacy school. Sur took the July 20, 2019, CPJE exam. He denied ever receiving, sharing, or discussing CPJE test questions with anyone. He never received any documents or files related to the CPJE from respondent.

49. After Sur had received notification that the CPJE test results were being delayed, he received a request for an interview with the board. Immediately after that, the dean of his school sent an email stating that the school would provide legal counsel to anyone being interviewed by the board regarding allegations of cheating. After receiving this email, Sur spoke with respondent about it. At this point, respondent mentioned that he had already been interviewed by the board. Respondent told Sur he did not remember what he had told the investigators, he did not know what was going on, and he was confused the whole time. Sur testified he could not recall if respondent said anything about mentioning Sur's name during his board interview, but he thinks he would have remembered if respondent had.

50. Sur testified that the inspectors were aggressive from the start of the interview, which lasted 15 minutes. The inspector did not ask about respondent or any of the friends. At the interview, he denied sharing or receiving questions and answers.

51. After his interview with the board, Sur talked to respondent and told him it was very brief. Sur first learned that respondent had identified Sur after respondent obtained representation and his lawyers contacted Sur about this case. This was the first time Sur learned of his own involvement in this matter.

TESTIMONY OF JAE WOOK YANG

52. Jae Wook Yang submitted a letter and testified at hearing with the assistance of a court-certified Korean language interpreter. His testimony and the letter are summarized as follows: Yang is respondent's father. He obtained a Doctor of Philosophy in Korea and then attended a post-doctorate program at Stanford University, where he obtained his Doctor of Pharmacy. The board licensed him as a pharmacist in 2006. He has taught at two pharmacy schools in the United States and is currently a professor of pharmacy in Korea. Yang taught respondent the importance of honesty and has never known respondent to be dishonest. Yang lived with respondent while he was studying for the CPJE. Respondent studied diligently, and Yang felt respondent was prepared for the test and the NAPLEX. Respondent had no reason to cheat since he was so well prepared. He was surprised when he heard that the board had accused respondent of cheating. It was only a week before the hearing that he heard respondent was accused of compiling test questions.

TESTIMONY OF ROBIN PARK

53. Robin Park is a minister at respondent's church who testified at hearing and submitted a letter. Park has known respondent since respondent was a child. Respondent is an active participant in the church and part of the worship team. He is respected by other members of the church. He was shocked to hear the allegations that respondent cheated on a test. He has no reason to question respondent's honesty and character.

DECLARATION OF EUNSI EUM

54. A declaration by Eunsi Eum was received as administrative hearsay, which is summarized as follows: Eum was respondent's classmate in pharmacy school. She

knew respondent to be a smart, honest, and dedicated student. He was diligent and hardworking. Eum moved to Long Beach in June 2019 to study for the CPJE. At no time did she receive or share examination questions with respondent or any individual. She took the CPJE on July 20, 2019, but was informed that the results had been compromised. On September 26, 2019, board inspectors came to her workplace and interviewed her. They later requested a second interview. The inspectors never asked her about respondent during her interviews. They never asked her if respondent provided her any test questions. She was allowed to retake the CPJE and was subsequently issued a pharmacist license in December 2019.

DECLARATION BY HELEN RHEE

55. A declaration by Helen Rhee was received as administrative hearsay and is summarized as follows: Rhee was a classmate of respondent's in pharmacy school. Respondent was a nice person who studied hard. He was elected as a class officer. Rhee never studied with respondent in preparation for the CPJE, which she took on July 22, 2019. She never had any conversations with respondent or anyone else regarding the contents of the exam questions. She spoke with respondent while driving back from the exam and expressed that she was nervous about her performance and the results. They also talked about her new boyfriend. At no time during the conversation did they discuss specific contents of the exam or her answers. Board inspectors came to her work in September 2019 and interviewed her. The interview lasted 40 minutes. The investigators were very aggressive in the way they handled the interview. Rhee participated in a second interview with the attorney provided by the pharmacy school. After the interview, she was allowed to retake the CPJE and was licensed as a pharmacist in January 2020.

ADDITIONAL REFERENCE LETTERS

56. Respondent submitted character reference letters from Stephen Choi, Pharm.D., who has known respondent for the past five years; Junseok Lee, an associate pastor at respondent's church who has known respondent for nine years; Jason Yang, Pharm.D., who has known respondent for the past seven years; and Linda Williams, the Associate Dean of Student Admissions at LLU. All of the references spoke very highly of respondent's character and his performance in pharmacy school.

Evaluation of the Evidence

57. Complainant contends that respondent gave truthful and accurate answers to the board's inspectors during the September 22, 2019, interview, and based on those responses, admitted to receiving and distributing CPJE test questions. Based on respondent's admissions during the interview, complainant contends there is sufficient evidence to establish grounds for disciplinary action and license denial.

58. Respondent contends that the board's inspectors inaccurately recorded his responses and engaged in improper tactics during the interview. Respondent maintains that he never engaged in the conduct alleged, specifically, obtaining exam question and answers from Rhee soon after she took the exam, receiving an electronic file containing exam questions and answers from Eum, and sending this file to Joo and Sur.

59. The first issue is whether the statements attributed to respondent during the September 22, 2019, interview were accurate. Respondent contends that the statements attributed to him during the interview were not accurate and that the interview should have been recorded. While there is no question that a recorded interview would be the most reliable record of what occurred during the September

22, 2019, interview, the absence of a recording does not render the inspectors' memory and notes per se unreliable or insufficient to support a finding of fact. One could speculate that there are investigative reasons that the agency might elect not to record these types of interviews, for example, because a subject may be less willing to speak if he knows he is being recorded. Regardless of the board's decision not to record the conversation and the rationale for that decision, complainant attributed several admissions by respondent as evidence that he engaged in misconduct involving the CPJE. This in turn requires a detailed evaluation of the witnesses' credibility.

60. The credibility of witnesses was evaluated considering the following factors: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given. (Evid. Code, § 780.) A trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App. 2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal. 3d 875, 890.)

61. Unlike most investigators employed by professional licensing agencies, board inspectors are required to be licensed in the profession. Indeed, both Ngondara and Kyle are not only experienced inspectors, but experienced pharmacists. The Pharmacy Law and regulations are extensive and make the practice of pharmacy one of the most regulation-intense professions in the state. There is little doubt that having a keen attention to detail is a quality expected in pharmacists, where mistakes can have significant consequences. Both board inspectors displayed such attention to detail in this investigation. Ngondara entered the interview with a written outline of questions to ask and areas to cover. He took contemporaneous notes during the interview as did Kyle. Ngondara reviewed these notes the next day and had Kyle review them for accuracy, adding additional information. Both Ngondara and Kyle testified that the notes accurately reflected what respondent said during the interview. Their testimony and Ngondara's report were highly credible.

There was no evidence that respondent did not understand the questions that were being asked. There was no evidence (apart from respondent's testimony) that the notes contained any material inaccuracies such as to diminish their probative value.⁹ Neither the investigators' demeanor while testifying or any external evidence in the record suggests bias or a reason to fabricate. In sum, clear and convincing evidence established that during the September 22, 2019, interview, respondent made a number of admissions regarding his and others' role in using actual CPJE test questions to

⁹ While the statement in Ngondara's original notes that respondent went to church on Sunday was inaccurate, Ngondara admitted as such, and it was not included in his revised notes. This inaccuracy (like Kyle's reference to Cambria instead of Calibri) was of such little consequence as to have no material bearing on the credibility of the inspectors' testimony as a whole.

prepare for their upcoming examination. These admissions included speaking to Rhee about specific test questions following her test, receiving an electronic document containing test questions from Eum, forwarding this file to Joo and Sur, and receiving photos of test questions from another individual.

Moreover, clear and convincing evidence established that these admissions by respondent were truthful. Both inspectors noted that respondent was extremely cooperative during the interview. It was apparent that respondent, at least initially, had no perception that he might have done anything wrong, and was thus very forthcoming. He did not believe that it was considered cheating or unlawful to prepare for the test using questions and answers that others had memorized after taking the actual test, and noted that everyone did it. Respondent indicated a willingness to help the inspectors with their investigation, which he believed, involved more blatant cheating such as taking materials into the test room or removing test questions from the site. Based on respondent's admissions, the inspectors left the interview with the impression that respondent had been completely cooperative. There is no reason to doubt the veracity and truthfulness of respondent's statements at the time.

However, this soon changed. The evidence as a whole is best viewed as establishing that after the interview, respondent got cold feet and realized what he had admitted to the inspectors. It could not have helped that the inspectors proceeded to interview Eum and Rhee days after. When Ngondara sent respondent a follow-up email requesting additional information, respondent decided it would be in his interest to claim a misunderstanding and try to convince Ngondara that he was mistaken about what respondent had said. Thus, respondent disavowed all of the admissions of misconduct and instead claimed that he was either misunderstood, or did not know what was happening.

Respondent's testimony at hearing echoed these latter claims, as he maintained that the inspectors misunderstood what he had initially told them. Additionally, he implied that he was so confused and perplexed about why the inspectors were asking him questions, and in such a hurry to end the interview, that he simply told the inspectors what he thought they wanted to hear.

62. Respondent's testimony at hearing was not credible. For the reasons noted above, it appears respondent tried to backtrack from his statements once he realized he had implicated himself and his classmates in potential misconduct. The testimony of Joo and Sur and the declarations of Rhee and Eum in corroboration of respondent's testimony is of little weight as compared with the highly credible testimony of the two investigators and the findings thereon discussed above. There is no question that all four individuals have a strong motive to lie about their involvement. Respondent's statements as reported by the two unbiased investigators that respondent received or passed test questions to and from the other students was far more credible than the students' collective testimony to the contrary.¹⁰

¹⁰ In this regard, the letter by Dean Hogue of the LLU Pharmacy School is best viewed as reflecting an intent to protect the school's reputation and potential fallout from a cheating scandal, rather than a genuine concern for his recent graduates. His assertion that the board inspectors were conducting "unwarranted interrogations" of his graduates is disingenuous, considering he would have no first-hand knowledge of the nature of the board's investigation and whether the graduates had used unauthorized test questions. Considering respondent admitted involvement and implicated four others, the board did not conduct a fishing expedition. Moreover, Joo and Sur testified that the offer for legal counsel only extended to cases where the student informed the school that he/she had no involvement in cheating. The offer to

63. Next, respondent contends that his statements to the inspectors were the product of coercion or improper tactics by the board inspectors. He argues that they failed to advise him of the right to remain silent, the right to have an attorney present during questioning, and the right to leave or stop answering questions; conducted a pretextual inspection of the pharmacy without revealing to respondent the true reason and nature of the interview; and interviewed him for more than three-and-a-half hours in a closed office. Moreover, respondent contends that the board refused him the opportunity for a second interview despite his repeated requests.

Respondent provided no legal authority to support his claim that the inspectors acted unlawfully. There was nothing inappropriate about the interview or the use of standard investigative techniques employed by the inspectors, who have broad investigative authority. (Gov. Code, § 11180.) Respondent erroneously believed that the administrative investigation process affords similar due process as provided in formal administrative proceedings. The purpose of an investigative interview is to obtain information, often from people who are reluctant to disclose it. In this regard, respondent suggests that the inspectors were obligated to disclose to him the purpose of the interview and their evidence. Not only is there no legal requirement for such, it is a reasonable and accepted investigative technique to withhold this information. Likewise, that the inspectors interviewed respondent under the auspices of a routine inspection is entirely permissible. The interview in no manner approached a custodial interrogation, and the protections afforded to custodial interrogations in criminal

provide legal counsel only for “innocent” graduates provided a strong incentive for those involved in prohibited conduct to profess such innocence in order to take advantage of the free legal counsel.

investigations are not applicable in administrative investigations.¹¹ Even if they were, respondent's subjective belief that he was not free to leave is not objectively reasonable; there is a stark difference between being unable to physically leave, akin to arrest, and feeling compelled to answer questions for fear of negative consequences. In sum, the interview was not only legal, but produced the intended result of obtaining information from respondent – information respondent likely would not have disclosed had the inspectors not employed these investigative techniques. Finally, complainant was under no obligation to provide respondent a second interview.

Cost Recovery

64. Complainant submitted certifications of costs and requested cost recovery pursuant to Business and Professions Code section 125.3. A certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of

¹¹ First, board inspectors are not peace officers and do not have arrest authority. (Pen. Code, § 830.3, subd. (a).) "An interrogation is custodial, for purposes of requiring advisements under *Miranda*, when 'a person has been taken into custody or otherwise deprived of his freedom in any significant way.' (*Miranda v. Arizona* (1966) 384 U.S. 436, 444.) Custody consists of a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400.)" (*People v. Moore*, (2011) 51 Cal.4th 386, 395-395.) Finally, even if there were a violation of *Miranda*, the exclusionary rule applied in criminal cases does not apply in administrative cases. (*Emslie v. State Bar of Calif.* (1974) 11 Cal.3d 210, 226-230.)

\$9,173.75 through July 6, 2020. Attached to the certification is a form entitled, "Matter Time Activity By Professional Type." The attachment contains a general description of the tasks performed, the time spent on the tasks, and the hourly rate charged for the work of each employee. The certification of cost satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certifications support a finding that costs in the amount of \$9,173.75 are reasonable in both the nature and extent of the work performed.

65. Respondent did not address his ability to pay costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.) In its accusation to revoke respondent's pharmacist intern license, the burden of proof is on complainant.

2. Unless otherwise provided by law, a party asserting at an administrative hearing that he or she should be granted a certain benefit, such as a license or permit, has the burden to establish by a preponderance of the evidence that he or she should be granted that benefit. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-52.) "Preponderance of the evidence" means evidence that

has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.) Respondent has the burden of proof to establish that a pharmacist license should be granted.

Purpose of License Discipline

3. The business of compounding prescriptions and selling drugs is intimately connected with and has a vital relationship to the health, safety, and welfare of the public. Public safety must be regarded as superior to private rights. (*Brodsky v. California State Board of Pharmacy* (1959) 173 Cal.App.2d 680, 688-689.) Protection of the public is the board's highest priority in exercising its disciplinary functions; whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount. (Bus. & Prof. Code, § 4001.1.) The main purpose of license discipline is protection of the public through the prevention of future harm and the improvement and rehabilitation of the licensee. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Sup. Ct.* (2002) 96 Cal.App.4th 757, 772.)

Relevant Statutory Authority

4. Business and Professions Code section 496 provides: "The board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations."

5. Business and Professions Code section 123 provides in part:

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

6. Business and Professions Code section 4301 authorizes the board to take action against a license holder for unprofessional conduct which includes.

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

[¶] . . . [¶]

(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.

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

7. Business and Professions Code section 4300.1 provides that the cancellation of a license "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."

8. California Code of Regulations, title 16, section 1721 provides:

An applicant for examination as a pharmacist who engages in dishonest conduct during the examination shall not have that examination graded, shall not be approved to take the examination for three years from the date of the incident,

and shall surrender his or her intern license until eligible to take the examination. The applicant may not be issued a pharmacy technician license until the applicant is again eligible to take the examination.

9. California Code of Regulations, title 16, section 1723.1 provides:

Examination questions are confidential. Any applicant for any license issued by the board who removes all or part of any qualifying examination from the examination room or area, or who conveys or exposes all or part of any qualifying examination to any other person may be disqualified as a candidate for a license. The applicant shall not be approved to take the examination for three years from the date of the incident and shall surrender his or her intern license until again eligible to take the examination. The applicant may not be issued a pharmacy technician license until the applicant is again eligible to take the examination.

Cause Exists to Revoke Respondent's Intern Pharmacist License

10. Cause exists to revoke respondent's intern pharmacist license pursuant to Business and Professions Code section 496 based on a violation of section 123. Clear and convincing evidence established respondent subverted or attempted to subvert the CPJE, a licensing examination, by obtaining examination questions or other examination material and distributing, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

11. Cause exists to revoke respondent's intern pharmacist license pursuant to Business and Professions Code section 4301, subdivision (f). Clear and convincing evidence established acts involving moral turpitude, dishonesty, fraud, deceit, or corruption based on the above conduct.¹² Respondent was placed on notice that the examination questions were confidential and that memorizing test questions was unlawful. Respondent received, used, and distributed these questions, which benefited him in taking the examination. This was a dishonest, deceitful, or corrupt act.

12. Cause exists to revoke respondent's intern pharmacist license pursuant to Business and Professions Code section 4301, subdivision (o), based on a violation of California Code of Regulations, title 16, section 1723.1, for conveying test questions to another.

13. Cause exists to revoke respondent's intern pharmacist license pursuant to Business and Professions Code section 4301, subdivision (p), based on a violation of Section 496.

Cause Exists to Deny Respondent's Pharmacist License

14. Cause exist to deny respondent's pharmacist license pursuant to Business and Professions Code section 496 as established above.

Respondent's Defense

15. In his closing argument, respondent alleged the board through its counsel engaged in substantial delays and "obstreperous activities" designed to

¹² The Accusation did not allege respondent's email disavowing his previous statements or testimony at hearing was dishonest.

“frustrate the resolution of this matter.” He challenged the delay in the hearing as a violation of Business and Professions Code section 487. That provision requires that a denial of a license application be heard within 90 days from the date the hearing is requested, except in cases involving alleged examination or licensing fraud, in which case the period may be up to 180 days. Respondent requested a hearing on the denial of his license on December 5, 2019. Complainant erroneously submitted a Request to Set with the Los Angeles office, which assigned a hearing date of March 17, 2020. Subsequently, complainant filed a motion to change venue to the San Diego office.¹³ On April 8, 2020, respondent filed a request for preferential hearing setting, citing Business and Professions Code section 487. The request was granted, but due to the COVID-19 pandemic, the earliest hearing date available was June 2, 2020, which was within the 180-day statutory time limit. Following an order for the parties to meet and confer to select a hearing date, the parties agreed on July 15 and 16, 2020. No violation of Section 487 was established and there was no evidence of any misconduct on the part of the board or the Attorney General’s Office.

Disciplinary Considerations

16. California Code of Regulations, title 16, section 1769, provides criteria that must be considered in evaluating the rehabilitation of a license applicant and

¹³ Venue in Los Angeles was technically proper. Under Government Code section 11508, the hearing is to be held at the OAH facility closest to the location where the transaction occurred or respondent resides, which in this case, is Riverside. Although Riverside is closer to Los Angeles than San Diego, matters occurring in Riverside are customarily heard by OAH San Diego. Regardless, respondent did not object to the change of venue, which was ordered on February 27, 2020.

licensee. The criteria relevant to this matter are: the nature and severity of the acts or offenses under consideration as grounds for denial; evidence of any acts committed subsequent to the acts under consideration as grounds for denial; the time that has elapsed since commission of the acts; and evidence, if any, of rehabilitation submitted by the applicant.

17. California Code of Regulations, title 16, section 1760, provides that in reaching a decision in a disciplinary action under the Administrative Procedure Act, the board must consider its "Disciplinary Guidelines" (Rev. 2/2017). The factors relevant to this matter are: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record; number and/or variety of current violations; nature and severity of the acts under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the acts; whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, respondent had knowledge of or knowingly participated in such conduct; and financial benefit to respondent from the misconduct.

18. Pursuant to California Code of Regulations, title 16, section 1723.1, respondent may not retake the CPJE take until three years from the date of the incident. More important, respondent's testimony was not credible, and this weighs heavily against granting him a pharmacist license. Honesty is a key value of a pharmacist, and based on respondent's representations to the board and at this hearing, he cannot be trusted to provide truthful information. The irony of this case is that the underlying conduct – receiving, using, and distributing test questions others had memorized from the CPJE – is not egregious. It is understandable why someone who had not carefully reviewed the board's test admonitions would believe that this

was a permissible study method. Respondent was extremely forthright and cooperative during his interview with the board inspectors, which is a strong mitigating factor. Had respondent elected to continue on this path, it is probable that he would have faced no disciplinary action and would now be a licensed pharmacist. However, respondent chose a different route and attempted to disavow his statements, including under oath. While honest mistakes are afforded certain latitude, intentional deception is not. Respondent clearly worked hard to obtain his pharmacy degree. It is undoubtedly a bitter disappointment for him not to obtain a license. However, public protection mandates the revocation of his intern pharmacist license and denial of his application for a pharmacist license.

Cost Recovery

19. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.” (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a “subjective” good faith belief in the merits of his or her position; whether the licensee raised a “colorable challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and

whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.


Applying the *Zuckerman* criteria, respondent had a good faith belief in the merits of his position but did not challenge the proposed discipline that the license be revoked. Costs of \$9,173.75 will be assessed pursuant to a payment plan in the event that respondent submits a new application for licensure.

ORDER

1. Intern Pharmacist license number 36865 issued to Samuel Jinsuk Yang is revoked.
2. The application by respondent Samuel Jinsuk Yang for a pharmacist license is denied.

As a condition precedent to reinstatement of his revoked license, or upon the application of a new license, respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$9,173.75. Said amount shall be paid in full prior to the reinstatement of his license or granting a new license unless otherwise ordered by the board.

DATE: August 13, 2020

DocuSigned by:

19DED247706C4FB...

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 6869

13 **SAMUEL JINSUK YANG**
14 **4465 Rimcrest Dr.**
Riverside, CA 92505

ACCUSATION

15 **Intern Pharmacist License No. INT 36865**

16 Respondent.

17
18 **PARTIES**

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

21 2. On or about September 30, 2015, the Board of Pharmacy issued Intern Pharmacist
22 License Number INT 36865 to Samuel Jinsuk Yang (Respondent). The Intern Pharmacist
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on May 31, 2020, unless renewed.

25 **JURISDICTION**

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

1 In addition to any other penalties, a person found guilty of violating this
2 section, shall be liable for the actual damages sustained by the agency administering
3 the examination not to exceed ten thousand dollars (\$10,000) and the costs of
4 litigation.

5 (c) If any provision of this section or the application thereof to any person or
6 circumstances is held invalid, that invalidity shall not affect other provisions or
7 applications of the section that can be given effect without the invalid provision or
8 application, and to this end the provisions of this section are severable.

9 8. Section 480 of the Code states, in pertinent part:

10 (a) A board may deny a license regulated by this code on the grounds that the
11 applicant has one of the following:

12 (1) Been convicted of a crime. A conviction within the meaning of this section
13 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
14 Any action that a board is permitted to take following the establishment of a
15 conviction may be taken when the time for appeal has elapsed, or the judgment of
16 conviction has been affirmed on appeal, or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under the
18 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

19 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
20 substantially benefit himself or herself or another or substantially injury another.

21 (3) (A) Done any act that if done by a licentiate of the business or profession in
22 question, would be grounds for suspension or revocation of license.

23 * * *

24 9. Section 496 of the Code provides that a board may deny, suspend, revoke, or
25 otherwise restrict a license on the ground that an applicant or licensee has violated section 123
26 pertaining to the subversion of licensing examinations.

27 10. Section 584 of the Code provides, in pertinent part, that no person shall violate the
28 security of any examination, as defined in subdivision (a) of section 123.

11 11. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
12 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
13 not be limited to, any of the following:

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

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

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

2 **REGULATORY PROVISIONS**

3 12. California Code of Regulations, title 16, section 1721, states:

4 An applicant for examination as a pharmacist who engages in dishonest conduct during the
5 examination shall not have that examination graded, shall not be approved to take the
6 examination for three years from the date of the incident, and shall surrender his or her intern
7 technician license until the applicant is again eligible to take the examination.

8 13. California Code of Regulations, title 16, section 1723.1, states:

9 Examination questions are confidential. Any applicant for any license issued by the board
10 who removes all or part of any qualifying examination from the examination room or area, or
11 who conveys or exposes all or part of any qualifying examination to any other person may be
12 disqualified as a candidate for a license. The applicant shall not be approved to take the
13 examination for three years from the date of the incident and shall surrender his or her intern
14 technician license until again eligible to take the examination. The applicant may not be issued a pharmacy
15 technician license until the applicant is again eligible to take the examination.

16 **COST RECOVERY**

17 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation of the licensing
19 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

20 **FACTUAL ALLEGATIONS**

21 15. Respondent took the California Practice Standards and Jurisprudence Examination for
22 Pharmacists (CPJE) on July 25, 2019. Prior to that date, Respondent knowingly obtained a
23 document containing unauthorized reproduction of several questions that had been improperly
24 taken, removed, and/or copied from the CPJE. Respondent utilized that document to prepare for
25 the CPJE, and also shared the document with at least two other individuals preparing for the
26 CPJE. Respondent obtained additional questions improperly taken, removed, and/or copied from
27 the CPJE through conversations and written communications with other individuals who had
28 already taken the exam.

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FIRST CAUSE FOR DISCIPLINE

(Subversion of Licensing Examination)

16. Respondent is subject to disciplinary action under section 496, by reference to sections 123 and 584 of the Code, in that Respondent subverted or attempted to subvert a licensing examination, as described above in paragraph 14.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Conduct)

17. Respondent is subject to disciplinary action under section 4301, subdivision (f), of the Code, in that, as described above in paragraph 14, Respondent engaged in dishonest conduct.

THIRD CAUSE FOR DISCIPLINE

(Examination Misconduct)

18. Respondent is subject to disciplinary action under section 4301, subdivision (o), of the Code, by reference to California Code of Regulations, title 16, section(s) 1721 and/or 1723.1, in that, as described above in paragraph 14, Respondent engaged in dishonest conduct during an examination.

FOURTH CAUSE FOR DISCIPLINE

(Conduct Warranting Denial)

19. Respondent is subject to disciplinary action under section 4301, subdivision (p), of the Code, by reference to section 480, subdivision (a)(2) and/or subdivision (a)(3)(A), in that, as described above in paragraph 14, Respondent engaged in conduct that would have warranted license denial, namely: dishonest conduct intended to substantially benefit himself or another, or substantially injure another; and/or an act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of a license.

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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 Pharmacist License Number INT 36865, issued to Samuel Jinsuk Yang;

2. Ordering Samuel Jinsuk Yang to 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,

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

DATED: December 20, 2019



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

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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 Statement of Issues
Against:

13 **SAMUEL JINSUK YANG**

14 **Pharmacist License Applicant**

15 Respondent.

Case No. 6883

STATEMENT OF ISSUES

16
17
18 **PARTIES**

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

21 2. On or about May 30, 2019, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a Pharmacist License from Samuel Jinsuk Yang (Respondent). On or
23 about May 22, 2019, Samuel Jinsuk Yang certified under penalty of perjury to the truthfulness of
24 all statements, answers, and representations in the application. The Board denied the application
25 on November 19, 2019.

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1 **JURISDICTION**

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

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

8 **STATUTORY PROVISIONS**

9 5. Section 123 of the Code states:

10 It is a misdemeanor for any person to engage in any conduct which subverts or
11 attempts to subvert any licensing examination or the administration of an
examination, including, but not limited to:

12 (a) Conduct which violates the security of the examination materials; removing
13 from the examination room any examination materials without authorization; the
14 unauthorized reproduction by any means of any portion of the actual licensing
15 examination; aiding by any means the unauthorized reproduction of any portion of the
16 actual licensing examination; paying or using professional or paid examination-takers
17 for the purpose of reconstructing any portion of the licensing examination; obtaining
18 examination questions or other examination material, except by specific authorization
either before, during, or after an examination; or using or purporting to use any
examination questions or materials which were improperly removed or taken from
any examination for the purpose of instructing or preparing any applicant for
examination; or selling, distributing, buying, receiving, or having unauthorized
possession of any portion of a future, current, or previously administered licensing
examination.

19 (b) Communicating with any other examinee during the administration of a
20 licensing examination; copying answers from another examinee or permitting one's
21 answers to be copied by another examinee; having in one's possession during the
22 administration of the licensing examination any books, equipment, notes, written or
23 printed materials, or data of any kind, other than the examination materials
distributed, or otherwise authorized to be in one's possession during the examination;
or impersonating any examinee or having an impersonator take the licensing
examination on one's behalf.

24 Nothing in this section shall preclude prosecution under the authority provided
for in any other provision of law.

25 In addition to any other penalties, a person found guilty of violating this
26 section, shall be liable for the actual damages sustained by the agency administering
the examination not to exceed ten thousand dollars (\$10,000) and the costs of
litigation.

27 (c) If any provision of this section or the application thereof to any person or
28 circumstances is held invalid, that invalidity shall not affect other provisions or

1 applications of the section that can be given effect without the invalid provision or
2 application, and to this end the provisions of this section are severable.

3 6. Section 480 of the Code states, in pertinent part:

4 (a) A board may deny a license regulated by this code on the grounds that the
5 applicant has one of the following:

6 (1) Been convicted of a crime. A conviction within the meaning of this section
7 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
8 Any action that a board is permitted to take following the establishment of a
9 conviction may be taken when the time for appeal has elapsed, or the judgment of
10 conviction has been affirmed on appeal, or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

13 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
14 substantially benefit himself or herself or another or substantially injury another.

15 (3) (A) Done any act that if done by a licentiate of the business or profession in
16 question, would be grounds for suspension or revocation of license.

17 * * *

18 7. Section 496 of the Code provides that a board may deny, suspend, revoke, or
19 otherwise restrict a license on the ground that an applicant or licensee has violated section 123
20 pertaining to the subversion of licensing examinations.

21 8. Section 584 of the Code provides, in pertinent part, that no person shall violate the
22 security of any examination, as defined in subdivision (a) of section 123.

23 9. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
24 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
25 not be limited to, any of the following:

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

(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.

REGULATORY PROVISIONS

10 10. California Code of Regulations, title 16, section 1721, states:

11 An applicant for examination as a pharmacist who engages in dishonest conduct during the
12 examination shall not have that examination graded, shall not be approved to take the
13 examination for three years from the date of the incident, and shall surrender his or her intern

1 license until eligible to take the examination. The applicant may not be issued a pharmacy
2 technician license until the applicant is again eligible to take the examination.

3 11. California Code of Regulations, title 16, section 1723.1, states:

4 Examination questions are confidential. Any applicant for any license issued by the board
5 who removes all or part of any qualifying examination from the examination room or area, or
6 who conveys or exposes all or part of any qualifying examination to any other person may be
7 disqualified as a candidate for a license. The applicant shall not be approved to take the
8 examination for three years from the date of the incident and shall surrender his or her intern
9 license until again eligible to take the examination. The applicant may not be issued a pharmacy
10 technician license until the applicant is again eligible to take the examination.

11 **FACTUAL ALLEGATIONS**

12 12. Respondent took the California Practice Standards and Jurisprudence Examination for
13 Pharmacists (CPJE) on July 25, 2019. Prior to that date, Respondent knowingly obtained a
14 document containing unauthorized reproduction of several questions that had been improperly
15 taken, removed, and/or copied from the CPJE. Respondent utilized that document to prepare for
16 the CPJE, and also shared the document with at least two other individuals preparing for the
17 CPJE. Respondent obtained additional questions improperly taken, removed, and/or copied from
18 the CPJE through conversations and written communications with other individuals who had
19 already taken the exam.

20 **FIRST CAUSE FOR DENIAL OF APPLICATION**

21 (Acts Involving Dishonesty)

22 Respondent's application is subject to denial under Code section 480, subdivision (a)(2), in
23 that Respondent committed acts of dishonesty, fraud, or deceit with the intent to substantially
24 benefit himself, as described above in paragraph 12.

25 **SECOND CAUSE FOR DENIAL OF APPLICATION**

26 (Acts Warranting Suspension or Revocation)

27 Respondent's application is subject to denial under Code sections 480, subdivision
28 (a)(3)(A), by reference to Code section 4301, subdivisions (f) and (o), and California Code of
Regulations, title 16, section(s) 1721 and/or 1723.1, in that Respondent committed acts which if
done by a licensed pharmacist would be grounds for suspension or revocation, as described above
in paragraph 12.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Subversion of Licensing Examination)

Respondent's application is subject to denial under Code section 496, by reference to sections 123 and 584, in that Respondent subverted or attempted to subvert a licensing examination, as described above in paragraph 12.

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. Denying the application of Samuel Jinsuk Yang for a Pharmacist License;
2. Taking such other and further action as deemed necessary and proper.

DATED: February 18, 2020



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

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