

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

**In the Matter of the Petition for Early Termination of
Probation of:**

SO HYUNG KIM, Petitioner

Agency Case No. 6916

OAH Case No. 2023030208

DECISION

This matter was heard before a quorum of the Board of Pharmacy (Board) by videoconference on March 15, 2023. Jessica Wall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, presided.

Nicole R. Trama, Deputy Attorney General, appeared pursuant to Government Code section 11522.

So Hyung Kim (petitioner) represented herself.

Evidence was received, the record closed, and the matter submitted for decision on March 15, 2023.

FACTUAL FINDINGS

License and Disciplinary History

1. On July 26, 2019, the Board received an Intern Pharmacist License application (application) from petitioner. The Board denied the application on February 4, 2020, and subsequently received petitioner's timely request for an appeal.

2. On March 26, 2020, the Board's Executive Officer, in her official capacity, signed and thereafter filed a Statement of Issues against petitioner. The Statement of Issues alleged cause to deny petitioner's application because: (1) she was convicted of a crime substantially related to the qualifications, functions, and duties of an intern pharmacist or pharmacist; and (2) her dangerous use of alcohol, if done by a Board licensee, would be grounds for suspension or revocation of license.

Specifically, on October 28, 2019, in Orange County Superior Court, petitioner was convicted on her guilty plea of violating Vehicle Code sections 23103 and 23103.5 (reckless driving involving the consumption of alcohol), a misdemeanor. The court sentenced petitioner to serve one day in jail and ordered her to complete three years of probation, attend and complete a three-month Drinking Driver Program and a Victim Impact Panel, and pay fines and fees. The conviction arose from an incident on April 28, 2019, when petitioner was arrested for driving with a blood alcohol concentration of 0.20 percent.

3. On May 23, 2020, petitioner signed a Stipulated Settlement and Disciplinary Order (Stipulated Settlement), submitted for the Board's consideration. By virtue of the Stipulated Settlement, petitioner admitted the truth of the allegations and charges in the Statement of Issues, agreed her application was subject to denial, and

requested that an Intern Pharmacist License be issued to her, subject to stayed revocation and placement on probation for three years. She further agreed that if the Board issued her a Pharmacist License, any remaining probation period would apply to that license. Her probation conditions consisted of all standard probation conditions (including payment of probation monitoring costs), as well as substance-abuse-related conditions, such as participating in the Pharmacists Recovery Program (PRP), abstaining from drugs and alcohol, random drug and alcohol testing, prescription coordination and monitoring, attending facilitated group recovery and/or support meetings, and supervision by a work site monitor.

4. In a Decision and Order dated June 29, 2020, the Board adopted the Stipulated Settlement as its own decision. The decision became effective on July 29, 2020. On September 1, 2020, the Board issued petitioner Intern Pharmacist License No. INT 47051 (license). The license will expire on May 31, 2024, unless renewed.

Conduct on Probation

5. Petitioner's Board probation began on July 29, 2020. She has complied with all probation conditions and has paid the costs associated with probation monitoring. Although her probation is scheduled to end on July 28, 2023, she will remain on probation until she completes the transition stage of the PRP. Thus far, petitioner has fully complied with all aspects of the PRP.

Petition for Early Termination of Probation

6. On September 2, 2022, petitioner filed the instant Petition for Early Termination of Probation (Petition). Petitioner testified in support of her Petition and

offered letters of support, proof of her criminal expungement under Penal Code section 1203.4, and a written statement.

7. In her testimony, petitioner explained that her conviction occurred after a celebratory dinner. That evening, petitioner had celebrated her birthday, the end of final exams, and her admission into pharmacy school with wine and champagne, then drove home. She now recognizes the dangerous nature of this decision and how she could have harmed herself and others by driving after consuming alcohol. Petitioner took full responsibility for her decision and described how this irresponsible mistake was out of character for her.

8. Since her conviction, petitioner completed all requirements of her criminal sentence and is no longer on criminal probation. She has had no subsequent negative interactions with law enforcement. On September 22, 2021, the court expunged her conviction under Penal Code section 1203.4.

9. In July 2019, petitioner enrolled in pharmacy school at the University of California, San Francisco (UCSF). Over the past three and a half years, petitioner has served in student government and conducted research, in addition to her coursework and compliance with the Board's probation requirements. After she graduates this year, petitioner will enter a two-year post-graduate fellowship.

10. As part of her Board probation, petitioner was required to participate in the PRP. While she has maintained sobriety since February 14, 2020, petitioner does not identify as an individual with a substance use disorder. She attended a health professionals' support group, as well as Recovery Dharma, a Buddhist dependency support group that pairs step-work with meditation. Petitioner initially felt very out of place in support groups, but she grew to appreciate the opportunity to share her story,

learn from others, and develop self-compassion. If her probation is terminated early, petitioner intends to remain sober.

11. Although petitioner has been fully compliant with the PRP, she has not yet graduated from the program. The PRP ordinarily requires approximately two years of participation and the submission of various essays before entering the one-year transition phase of the program. Petitioner has completed those requirements and is being considered for the transition phase in April 2023.

12. Petitioner is grateful for the Board's probation program, which helped her learn more about how her personal choices impact her professional license. She views working in the profession as a great privilege and an "opportunity to give back to the community." Nevertheless, the requirements of probation have taken a great deal of time and financial resources. Petitioner would like to move forward into the next stage of her career without the limitations imposed by her probation and hopes that the Board will grant her early termination.

LETTERS OF SUPPORT

13. Under Business and Professions Code section 4309, subdivision (b), petitioner submitted two letters of recommendation from individuals licensed by the Board, including petitioner's work site monitor and mentor, and four letters of recommendation from private citizens, including petitioner's primary care provider. Board staff verified each letter. Each author professed knowledge of the underlying discipline and all but one was familiar with petitioner's activities since probation began.

14. Petitioner's work site monitor attested to petitioner's "outstanding performance as a student pharmacist throughout all her rotations at UCSF." Another author detailed petitioner's exemplary participation in the Health Professionals' Support Group, as well as the empathy and compassion she offered other group members. Overall, the authors lauded petitioner's competency as a student pharmacist, her professionalism, and her growth over the period of probation.

LEGAL CONCLUSIONS

1. An intern pharmacist whose license has been placed on probation for a period of three years or more may petition the Board for early termination of probation after at least two years have passed since the effective date of such discipline. (Bus. & Prof. Code, § 4309, subd. (a)(2).) Here, more than two years have passed since petitioner's probation period started on July 29, 2020. Thus, the Petition is timely.

2. Petitioner bears the burden of proving by clear and convincing evidence that early termination of probation is appropriate. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091–1092.) When evaluating the Petition, the Board may consider: (1) all of the petitioner's activities since the disciplinary action; (2) the offense for which the petitioner was disciplined; (3) the petitioner's activities during the time the license was in good standing; (4) the petitioner's documented rehabilitative efforts; and (5) the petitioner's general reputation for truth and professional ability. (Bus. & Prof. Code, § 4309, subd. (d).)

3. Petitioner took responsibility for her misconduct and took steps to prevent similar issues in the future. She demonstrated her accountability by participating in the PRP, even though she did not identify with the recovery community. During her testimony, petitioner spoke honestly. She approached probation with the seriousness it deserves and shared the lessons she will apply throughout her career. While petitioner has not yet completed the PRP, given the foregoing, the Board trusts that she no longer poses a danger to the public. Accordingly, continued monitoring is no longer necessary to ensure petitioner's safe and competent practice of pharmacy in California. Thus, the Petition is granted.

ORDER

The Petition for Early Termination of Probation filed by So Hyung Kim is GRANTED.

This Decision shall become effective at 5:00 p.m. on June 7, 2023.

It is so ORDERED on May 8, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues Against:

SO HYUNG KIM, Respondent

Intern Pharmacist License Applicant

Agency Case No. 6916

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on July 29, 2020.

It is so ORDERED on June 29, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name.

By

Greg Lippe
Board President

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

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13 In the Matter of the Statement of Issues
Against:

14 **SO HYUNG KIM**
15 **1591 40th Avenue**
San Francisco, CA 94122

16 **Intern Pharmacist License**

17 Respondent.
18

Case No. 6916

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

23 **PARTIES**

24 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
25 (Board). She brought this action solely in her official capacity and is represented in this matter by
26 Xavier Becerra, Attorney General of the State of California, by Diann Sokoloff, Supervising
27 Deputy Attorney General.

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2. Respondent So Hyung Kim (Respondent) is represented in this proceeding by attorney Keith K. Kim, whose address is: Law Offices of Keith K. Kim, 3435 Wilshire Blvd., Suite 2630, Los Angeles, CA 90010-1937.

3. On or about July 26, 2019, Respondent filed an application dated July 22, 2019, with the Board to obtain an Intern Pharmacist License.

JURISDICTION

4. Statement of Issues No. 6916 was filed before the Board, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on March 27, 2020. A copy of Statement of Issues No. 6916 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 6916. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 6916.

9. Respondent agrees that her Intern Pharmacist License is subject to denial and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that upon satisfaction of statutory and regulatory requirements thereof, an Intern Pharmacist Registration shall be issued to Respondent So Hyung Kim and shall be immediately revoked. The revocation will be stayed and the Respondent placed on three (3) years probation (unless extended) on the following terms and conditions.

IT IS FURTHER HEREBY ORDERED that, should Respondent So Hyung Kim subsequently be issued a Pharmacist License by the Board, any remaining probation period shall apply to that Pharmacist License. That is, upon satisfaction of statutory and regulatory requirements for issuance thereof, a Pharmacist License shall be issued to Respondent So Hyung Kim and shall be immediately revoked, with the revocation stayed and Respondent placed on probation for the remainder of the three (3) years originally ordered (plus any extension), on the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

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

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

1 **2. Report to the Board**

2 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
3 designee. The report shall be made either in person or in writing, as directed. Among other
4 requirements, respondent shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation.

6 Failure to submit timely reports in a form as directed shall be considered a violation of
7 probation. Any period(s) of delinquency in submission of reports as directed may be added to the
8 total period of probation. Moreover, if the final probation report is not made as directed,
9 probation shall be automatically extended until such time as the final report is made and accepted
10 by the board.

11 **3. Interview with the Board**

12 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
13 with the board or its designee, at such intervals and locations as are determined by the board or its
14 designee. Failure to appear for any scheduled interview without prior notification to board staff,
15 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
16 the period of probation, shall be considered a violation of probation.

17 **4. Cooperate with Board Staff**

18 Respondent shall timely cooperate with the board's inspection program and with the board's
19 monitoring and investigation of respondent's compliance with the terms and conditions of her
20 probation, including but not limited to: timely responses to requests for information by board
21 staff; timely compliance with directives from board staff regarding requirements of any term or
22 condition of probation; and timely completion of documentation pertaining to a term or condition
23 of probation. Failure to timely cooperate shall be considered a violation of probation.

24 **5. Continuing Education**

25 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
26 pharmacist as directed by the board or its designee.

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1 **6. Reporting of Employment and Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in Case Number 6916 and the terms, conditions and restrictions
4 imposed on respondent by the decision, as follows:

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

16 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
17 respondent undertaking any new employment, respondent shall cause (a) her direct supervisor, (b)
18 her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
19 compliance supervisor, and (c) the owner or owner representative of her employer, to report to the
20 board in writing acknowledging that the listed individual(s) has/have read the decision in Case
21 Number 6916, and terms and conditions imposed thereby. If one person serves in more than one
22 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
23 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
24 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
25 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in
26 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
27 in Case Number 6916, and the terms and conditions imposed thereby.

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1 If respondent works for or is employed by or through an employment service, respondent
2 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
3 of the decision in Case Number 6916, and the terms and conditions imposed thereby in advance
4 of respondent commencing work at such licensed entity. A record of this notification must be
5 provided to the board upon request.

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

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

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

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

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

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

24 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

25 During the period of probation, respondent shall not supervise any intern pharmacist, be the
26 pharmacist-in-charge, designated representative-in-charge, responsible manager or other
27 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
28 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

1 **9. Probation Monitoring Costs**

2 Respondent shall pay any costs associated with probation monitoring as determined by the
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
5 be considered a violation of probation.

6 **10. Status of License**

7 Respondent shall, at all times while on probation, maintain an active, current Intern
8 Pharmacist License with the board, including any period during which suspension or probation is
9 tolled. Failure to maintain an active, current Intern Pharmacist License shall be considered a
10 violation of probation.

11 If respondent's Intern Pharmacist License expires or is cancelled by operation of law or
12 otherwise at any time during the period of probation, including any extensions thereof due to
13 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
14 terms and conditions of this probation not previously satisfied.

15 **11. License Surrender While on Probation/Suspension**

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

24 Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall
25 license, including any indicia of licensure not previously provided to the board within ten (10)
26 days of notification by the board that the surrender is accepted if not already provided.
27 Respondent may not reapply for any license from the board for three (3) years from the effective
28 date of the surrender. Respondent shall meet all requirements applicable to the license sought as

1 of the date the application for that license is submitted to the board, including any outstanding
2 costs.

3 **12. Practice Requirement – Extension of Probation**

4 Except during periods of suspension, Respondent shall, at all times while on probation, be
5 employed as an Intern Pharmacist in California for a minimum of 10 hours per calendar month.
6 If she holds a pharmacist license, Respondent shall be employed as a pharmacist in California for
7 a minimum of sixty (60) hours per month.

8 Any month during which this minimum is not met shall extend the period of probation by
9 one month.

10 During any such period of tolling, Respondent must nonetheless comply with all terms and
11 conditions of probation.

12 If Respondent does not practice as an Intern Pharmacist or Pharmacist in California for the
13 minimum number of hours in any calendar month, for any reason (including vacation),
14 Respondent shall notify the board in writing within ten (10) days of the conclusion of that
15 calendar month. This notification shall include at least: the date(s), location(s), and hours of last
16 practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on
17 which respondent will resume practice at the required level. Respondent shall further notify the
18 board in writing within ten (10) days following the next calendar month during which respondent
19 practices as an Intern Pharmacist or Pharmacist in California for the minimum of hours. Any
20 failure to timely provide such notification(s) shall be considered a violation of probation.

21 It is a violation of probation for respondent's probation to be extended pursuant to the
22 provisions of this condition for a total period, counting consecutive and non-consecutive months,
23 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
24 probation period on its website.

25 “Cessation of practice” means any calendar month during which Respondent is not
26 practicing as an Intern Pharmacist or Pharmacist as defined by Business and Professions Code
27 sections 4000 et seq. for the applicable minimum number of hours. “Resumption of practice”
28 means any calendar month during which Respondent is practicing an Intern Pharmacist or

1 Pharmacist as defined by Business and Professions Code section 400 et seq. for the applicable
2 minimum number of hours.

3 **13. Violation of Probation**

4 If respondent has not complied with any term or condition of probation, the board shall
5 have continuing jurisdiction over respondent, and the board shall provide notice to respondent
6 that probation shall automatically be extended, until all terms and conditions have been satisfied
7 or the board has taken other action as deemed appropriate to treat the failure to comply as a
8 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
9 board or its designee may post a notice of the extended probation period on its website.

10 If respondent violates probation in any respect, the board, after giving respondent notice
11 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
12 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
13 probation, or the preparation of an accusation or petition to revoke probation is requested from
14 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
15 probation shall be automatically extended until the petition to revoke probation or accusation is
16 heard and decided.

17 **14. Completion of Probation**

18 Upon written notice by the board or its designee indicating successful completion of
19 probation, respondent's license will be fully restored.

20 **15. Pharmacists Recovery Program (PRP)**

21 By no later than ten (10) days after the effective date of this decision, respondent shall have
22 completed all of the following: contacted the Pharmacists Recovery Program (PRP) for
23 evaluation; enrolled in the PRP; completed, signed, and returned the treatment contract as well as
24 any addendums required or suggested by the PRP; successfully completed registration for any
25 drug or alcohol testing mandated by the treatment contract and/or by enrollment in the PRP; and
26 begun compliance with the drug or alcohol testing protocol(s). Respondent shall successfully
27 participate in the PRP and complete the treatment contract and any addendums required or
28 suggested by the PRP. The costs for PRP participation shall be borne by the respondent.

1 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
2 the effective date of this decision is no longer considered a self-referral under Business and
3 Professions Code section 4362 (a)(2). Respondent shall successfully participate in and complete
4 his or her current contract and any subsequent addendums with the PRP.

5 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
6 timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid
7 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

8 Any of the following shall result in the automatic suspension of practice by respondent and
9 shall be considered a violation of probation:

10 Failure to contact, complete enrollment, and execute and return the treatment contract with
11 the PRP, including any addendum(s), within ten (10) days of the effective date of the decision as
12 directed by the PRP;

13 Failure to complete registration for any drug or alcohol testing mandated by the treatment
14 contract and/or by the PRP, and begin compliance with the testing protocol(s), within ten (10)
15 days of the effective date of the decision as directed by the PRP;

16 Failure to comply with testing protocols regarding daily check-in and/or failure to complete
17 a mandated test as directed by the PRP;

18 Any report from the PRP of material non-compliance with the terms and conditions of the
19 treatment contract and/or any addendum(s); or

20 Termination by the PRP for non-compliance, failure to derive benefit, or as a public risk.

21 Respondent may not resume the practice of pharmacy until notified by the board in writing.

22 Probation shall be automatically extended until respondent successfully completes the PRP.
23 The board will provide notice of any such suspension or extension of probation.

24 During any suspension, respondent shall not enter any pharmacy area or any portion of the
25 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
26 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
27 any area where dangerous drugs and/or dangerous devices or controlled substances are
28 maintained. Respondent shall not practice as an Intern Pharmacist nor do any act involving drug

1 selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor
2 shall respondent manage, administer, or be a consultant to any licensee of the board, or have
3 access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs
4 and/or dangerous devices or controlled substances.

5 During any suspension, respondent shall not engage in any activity that requires the
6 professional judgment of and/or licensure as an Intern Pharmacist. Respondent shall not direct or
7 control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling,
8 or retailing of dangerous drugs and/or dangerous devices or controlled substances.

9 Failure to comply with any requirement or deadline stated by this term shall be considered a
10 violation of probation.

11 **16. Drug and Alcohol Testing**

12 Respondent, at her own expense, shall participate in testing as directed by the board or its
13 designee for the detection of alcohol, controlled substances, and dangerous drugs and/or
14 dangerous devices. Testing protocols may include biological fluid testing (urine, blood),
15 breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its
16 designee. All testing must be pursuant to an observed testing protocol, unless respondent is
17 informed otherwise in writing by the board or its designee. Respondent may be required to
18 participate in testing for the entire probation period and frequency of testing will be determined
19 by the board or its designee.

20 By no later than thirty (30) days after the effective date of this decision, respondent shall
21 have completed all of the following tasks: enrolled and registered with an approved drug and
22 alcohol testing vendor; provided that vendor with any documentation, and any information
23 necessary for payment by respondent; commenced testing protocols, including all required
24 contacts with the testing vendor to determine testing date(s); and begun testing. At all times,
25 respondent shall fully cooperate with the testing vendor, and with the board or its designee, with
26 regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to
27 cooperate timely shall be considered a violation of probation.

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1 Respondent may be required to test on any day, including weekends and holidays.

2 Respondent is required to make daily contact with the testing vendor to determine if a test is
3 required, and if a test is required must submit to testing on the same day.

4 Prior to any vacation or other period of absence from the area where the approved testing
5 vendor provides services, respondent shall seek and receive approval from the board or its
6 designee to use an alternate testing vendor to ensure testing can occur. Upon approval,
7 respondent shall enroll and register with the approved alternate drug testing vendor, provide to
8 that alternate vendor any documentation required by the vendor, including any necessary payment
9 by respondent. During the period of absence of the area, respondent shall commence testing
10 protocols with the alternate vendor, including required daily contacts with the testing vendor to
11 determine if testing is required, and required testing. Any failure to timely seek or receive
12 approval from the board or its designee, or to timely enroll and register with, timely commence
13 testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be
14 considered a violation of probation.

15 Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its
16 designee may require respondent to timely provide documentation from a licensed practitioner
17 authorized to prescribe the detected substance demonstrating that the substance was administered
18 or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such
19 documentation shall be provided by respondent within ten (10) days of being requested.

20 Any of the following shall be considered a violation of probation and shall result in
21 respondent being immediately suspended from practice as an Intern Pharmacist until notified by
22 the board in writing that she may resume practice: failure to timely complete all of the steps
23 required for enrollment/registration with the drug testing vendor, including making arrangements
24 for payment; failure to timely commence drug testing protocols; failure to contact the drug testing
25 vendor as required to determine testing date(s); failure to test as required; failure to timely supply
26 documentation demonstrating that a detected substance was taken pursuant to a legitimate
27 prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or
28 of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the

1 detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In
2 the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a
3 controlled substance or dangerous drug absent documentation that the detected substance was
4 taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee
5 shall inform respondent of the suspension and inform her to immediately leave work, and shall
6 notify respondent's employer(s) and work site monitor(s) of the suspension.

7 During any such suspension, respondent shall not enter any pharmacy area or any portion of
8 the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug
9 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
10 any area where dangerous drugs and/or dangerous devices or controlled substances are
11 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
12 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
13 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
14 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
15 dangerous devices and controlled substances.

16 During any such suspension, respondent shall not engage in any activity that requires the
17 professional judgment of and/or licensure as an Intern Pharmacist. Respondent shall not direct or
18 control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling,
19 or retailing of dangerous drugs and/or dangerous devices.

20 Failure to comply with any such suspension shall be considered a violation of probation.
21 Failure to comply with any requirement or deadline stated by this term shall be considered a
22 violation of probation.

23 17. Notification of Departure

24 Prior to leaving the probationary geographic area designated by the board or its designee for
25 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
26 writing of the dates of departure and return. Failure to comply with this provision shall be
27 considered a violation of probation.

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1 **18. Abstain from Drugs and Alcohol**

2 Respondent shall completely abstain from the possession or use of alcohol, controlled
3 substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated
4 paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a
5 necessary part of treatment. Respondent shall ensure that she is not in the same physical location
6 as individuals who are using illicit substances even if respondent is not personally ingesting the
7 drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled
8 substances, or their associated paraphernalia for which a legitimate prescription has not been
9 issued as a necessary part of treatment, or any physical proximity to persons using illicit
10 substances, shall be considered a violation of probation.

11 **19. Prescription Coordination and Monitoring of Prescription Use**

12 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
13 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
14 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
15 history with the use of alcohol and who will coordinate and monitor any prescriptions for
16 respondent for dangerous drugs and/or dangerous devices, controlled substances or mood-altering
17 drugs. The approved practitioner shall be provided with a copy of the board's Statement of Issues
18 and decision. A record of this notification must be provided to the board or its designee upon
19 request. Respondent shall sign a release authorizing the practitioner to communicate with the
20 board or its designee about respondent's treatment(s). The coordinating physician, nurse
21 practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for
22 the duration of probation regarding respondent's compliance with this condition. If any substances
23 considered addictive have been prescribed, the report shall identify a program for the time limited
24 use of any such substances. The board or its designee may require that the single coordinating
25 physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive
26 medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease
27 supervision by the approved practitioner, respondent shall notify the board or its designee
28 immediately and, within thirty (30) days of ceasing supervision, submit the name of a

1 replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's
2 choice to the board or its designee for its prior approval. Failure to timely submit the selected
3 practitioner or replacement practitioner to the board or its designee for approval, or to ensure the
4 required quarterly reporting thereby, shall be considered a violation of probation.

5 If at any time an approved practitioner determines that respondent is unable to practice
6 safely or independently as an Intern Pharmacist, the practitioner shall notify the board or its
7 designee immediately by telephone and follow up by written letter within three (3) working days.
8 Upon notification from the board or its designee of this determination, respondent shall be
9 automatically suspended and shall not resume practice as an Intern Pharmacist until notified by
10 the board or its designee that practice may be resumed.

11 During any suspension, respondent shall not enter any pharmacy area or any portion of the
12 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
13 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
14 any area where dangerous drugs and/or dangerous devices or controlled substances are
15 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
16 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
17 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
18 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
19 dangerous devices and controlled substances. Respondent shall not resume practice until notified
20 by the board.

21 During any suspension, respondent shall not engage in any activity that requires the
22 professional judgment and/or licensure as an Intern Pharmacist. Respondent shall not direct or
23 control any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling,
24 or retailing of dangerous drugs and/or dangerous devices or controlled substances.

25 Failure to comply with any requirement or deadline stated by this term shall be considered a
26 violation of probation.

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1 **20. Facilitated Group Recovery and/or Support Meetings**

2 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
3 attendance at a group recovery and/or support meeting that is run by a trained facilitator approved
4 in advance by the board or its designee. The required frequency of group meeting attendance
5 shall be determined by the board or its designee. Respondent shall continue regular attendance as
6 directed at an approved facilitated group meeting until the board or its designee advises the
7 respondent in writing that she may cease regular attendance. Respondent shall provide signed
8 and dated documentation of attendance as required with each quarterly report. Failure to attend as
9 required or to submit documentation of attendance shall be considered a violation of probation.

10 If respondent is required to participate in the PRP, compliance with this term can be
11 demonstrated through that program. Where respondent is enrolled in the PRP, participation as
12 required in a facilitated group meeting approved by the PRP shall be sufficient for satisfaction of
13 this requirement. Any deviation from participation requirements for the PRP-approved group
14 shall be considered a violation of probation.

15 **21. Work Site Monitor**

16 Within ten (10) days of the effective date of this decision, respondent shall identify a work
17 site monitor, for prior approval by the board or its designee, who shall be responsible for
18 supervising respondent during working hours. Respondent shall be responsible for ensuring that
19 the work site monitor reports in writing to the board monthly or on another schedule as directed
20 by the board or its designee. Should the designated work site monitor suspect at any time during
21 the probationary period that respondent has abused alcohol or drugs, he or she shall notify the
22 board immediately.

23 In the event of suspected abuse, the monitor shall make at least oral notification within one
24 (1) business day of the occurrence, and shall be followed by written notification within two (2)
25 business days of the occurrence. If, for any reason, including change of employment, respondent
26 is no longer able to be monitored by the approved work site monitor, within ten (10) days
27 respondent shall designate a new work site monitor for approval by the board or its designee.
28 Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure

1 monthly reports are submitted to the board by the monitor, shall be considered a violation of
2 probation.

3 Within thirty (30) days of being approved by the board or its designee, the work site
4 monitor shall sign an affirmation that he or she has reviewed the terms and conditions of
5 respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at
6 least:

- 7 1) Have regular face-to-face contact with respondent in the work environment, at least
8 once per week or with greater frequency if required by the board or its designee;
- 9 2) Interview other staff in the office regarding respondent's behavior, if applicable; and
- 10 3) Review respondent's work attendance.

11 The written reports submitted to the board or its designee by the work site monitor shall
12 include at least the following information: respondent's name and license number; the monitor's
13 name, license number (if applicable) and work site location; the date(s) the monitor had face-to-
14 face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on
15 any changes in respondent's behavior or personal habits; notes on any indicators that may lead to
16 substance abuse; and the work site monitor's signature.

17 Respondent shall complete the required consent forms and sign an agreement with the work
18 site monitor and the board to allow the board to communicate with the work site monitor.

19 **22. No Ownership or Management of Licensed Premises**

20 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,
21 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
22 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
23 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
24 days following the effective date of this decision and shall immediately thereafter provide written
25 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
26 documentation thereof shall be considered a violation of probation.

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ACCEPTANCE

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

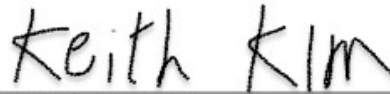
DATED: 5/23/20



SO HYUNG KIM
Respondent

I have read and fully discussed with Respondent So Hyung Kim the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/23/20



KEITH K. KIM
Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
CARL W. SONNE
Senior Assistant Attorney General



DIANN SOKOLOFF
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 6916

1 XAVIER BECERRA
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2 CARL W. SONNE
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3 DIANN SOKOLOFF
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4 State Bar No. 161082
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Attorneys for Complainant

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

11
12 In the Matter of the Statement of Issues
Against:

13 **SO HYUNG KIM**

14 **Intern Pharmacist License Applicant**

15 **Respondent.**
16

Case No. 6916

STATEMENT OF ISSUES

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 July 26, 2019, the Board of Pharmacy, Department of Consumer Affairs
22 (Board) received an intern pharmacist license application from So Hyung Kim (Respondent).
23 Respondent had certified under penalty of perjury to the truthfulness of all statements, answers,
24 and representations in the application on or about July 22, 2019. The Board denied the intern
25 pharmacist license application on or about February 4, 2020. On or about February 20, 2020, the
26 Board received a request for an appeal.

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28 ///

JURISDICTION

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

4. Section 118, subdivision (a), of the Code provides that the withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

5. Section 4300 of the Code states, in relevant part, that the board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

STATUTORY PROVISIONS

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

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

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

...

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

7. Section 4301 of the Code states, in pertinent part:

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

4 . . .

5 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
6 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
7 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
8 to the extent that the use impairs the ability of the person to conduct with safety to the public the
9 practice authorized by the license.

10 . . .

11 “(l) The conviction of a crime substantially related to the qualifications, functions, and
12 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
14 substances or of a violation of the statutes of this state regulating controlled substances or
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
17 The board may inquire into the circumstances surrounding the commission of the crime, in order
18 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
19 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
21 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
22 of this provision. The board may take action when the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
25 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
26 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
27 indictment.”

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FACTUAL BACKGROUND

8. On or about October 28, 2019, in a criminal matter entitled *The People of the State of California v. So Hyung Kim*, in the Superior Court of California, County of Orange, Case Number 19NM06423, Respondent pled guilty and was convicted of wet reckless driving. (Veh. Code, §§ 23103 per 23103.5.) Respondent was sentenced to 36 months' probation and ordered to serve one day in jail, attend and complete a three-month Drinking Driver Program, attend and complete Victim Impact counseling, submit to alcohol detection tests as requested by a peace officer, abstain from driving with any measurable amount of alcohol in her system, abstain from drinking alcohol beverages to excess, abstain from driving any motor vehicle unless lawfully licensed and insured, use true name and date of birth at all time, carry valid government issued identification card at all time, and pay court fines and fees. The circumstances supporting Respondent's conviction are set forth below.

9. On or about April 28, 2019, at approximately 3:09 a.m., an officer conducted an enforcement stop on Respondent's vehicle after observing her swerving and straddling lane lines. Upon contact with Respondent, the officer requested Respondent's license, registration, and proof of insurance. Respondent provided the officer with her registration, but related that her license was in her cell phone case and she was unsure of the location of her phone. The officer observed that Respondent's phone was mounted directly in front of Respondent with the GPS turned on. When the officer pointed this out, Respondent retrieved her license. While speaking with Respondent, the officer could smell a strong odor of alcohol emitting from her breath and she had an unsteady gait. Respondent admitted to having consumed two glasses of champagne prior to driving. The officer administered a series of field sobriety tests to which Respondent was unable to perform as explained and demonstrated. The officer arrested Respondent for driving under the influence of alcohol. Respondent submitted to a chemical blood test and her blood alcohol content registered at .20 percent.

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FIRST CAUSE FOR DENIAL OF APPLICATION
(Conviction of Substantially Related Crime)

10. Respondent has subjected her intern pharmacist application to denial because she was convicted of a crime substantially related to qualifications, functions, and duties of an intern pharmacist or pharmacist (Bus. & Prof. Code, § 480, subd. (a)(1)). The circumstances are described in paragraphs 8 and 9, above.

SECOND CAUSE FOR DENIAL OF APPLICATION
(Acts That Would Be Grounds for Discipline if Done by Licensee: Unprofessional Conduct)

11. Respondent has subjected her intern pharmacist application to denial because she committed acts that, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license. (Bus. & Prof. Code, § 480, subd. (a)(3)(A).) The acts described in paragraphs 8 and 9, above, if committed by a licensed intern pharmacist or licensed pharmacist, would subject the licensee to discipline for unprofessional conduct because the acts involved the dangerous use of alcohol (Bus. & Prof. Code, § 4301, subd. (h)), and/or because the acts involved the commission of a crime substantially related to the qualifications, functions, or duties of the licensee (Bus. & Prof. Code, § 4301, subd. (l)).

PRAYER

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

1. Denying the application of So Hyung Kim for an intern pharmacist license;
2. Taking such other and further action as deemed necessary and proper.

DATED: March 26, 2020



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

OK2020900123