

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

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

**SUN PHARMACY, INC., dba SUN PHARMACY, and
LUU PHUONG NGUYEN, Petitioners**

Agency Case No. 6992

OAH No. 2024120337

PROPOSED DECISION

This matter was heard before a quorum of the Disciplinary Petition Committee (Committee) of the Board of Pharmacy (Board), Department of Consumer Affairs, under Business and Professions Code section 4309, subdivision (c), by videoconference on December 18, 2024. Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided, assisted, and advised the Committee in the conduct of the hearing under Government Code section 11517, subdivision (b)(1).

Nicole R. Trama, Deputy Attorney General, represented the Attorney General of the State of California pursuant to Government Code section 11522.

Petitioners Sun Pharmacy Inc., doing business as (dba) Sun Pharmacy, and Luu Phuong Nguyen appeared. Petitioner Nguyen represented herself and petitioner Sun Pharmacy.

Evidence was received, the record closed, and the matter submitted for decision on December 18, 2024.

FACTUAL FINDINGS

Background

1. On May 8, 2006, the Board issued Pharmacist License No. RPH 58306 to petitioner Nguyen. The license will expire on January 31, 2026, unless renewed.

2. On April 29, 2016, the Board issued Pharmacy Permit No. PHY 54368 to petitioner Sun Pharmacy. The permit will expire on April 1, 2025, unless renewed. Petitioner Nguyen is the owner of petitioner Sun Pharmacy.

ACCUSATION

3. On October 30, 2020, complainant Anne Sodergren, Executive Officer of the Board, in her official capacity, signed and thereafter filed an Accusation against petitioner Sun Pharmacy's permit and petitioner Nguyen's license. Complainant alleged grounds to discipline the permit and license based on petitioners' violations of pharmacy law from 2016 to 2018, including failure to obtain a waiver for off-site storage, failure to reverse billed claims as required, and providing a quantity of medication to patients inconsistent with the billed quantity. Further, complainant alleged grounds to discipline petitioner Nguyen's license based on her taking medications from CVS stores and not returning them. At the time of the alleged

violations, petitioner Nguyen was the Pharmacist-in-Charge (PIC) of petitioner Sun Pharmacy.

STIPULATED SETTLEMENT AND PROBATIONARY LICENSE

4. Effective September 8, 2021, petitioners entered into a Stipulated Settlement and Disciplinary Order (Stipulated Settlement) with the Board. Petitioners admitted the truth of each and every charge and allegation set forth in the Accusation and agreed they established cause to discipline the permit and license. Pursuant to the Stipulated Settlement, the Board revoked petitioner Sun Pharmacy's permit and petitioner Nguyen's license, immediately stayed the revocation, and placed the permit and license on probation for five years. The terms and conditions of probation include submission of quarterly reports, payment of probation monitoring costs, and reimbursement of the Board's costs of investigation and enforcement in the amount of \$30,650. Petitioner Sun Pharmacy is required to ensure its employees are aware of its permit's probationary status and the terms and conditions of probation. Petitioner Nguyen is additionally required to complete an ethics course and practice under supervision.

Petition for Early Termination of Probation

5. In October 2024, petitioner Nguyen signed and thereafter filed with the Board Petitions for Early Termination of Probation for herself and petitioner Sun Pharmacy. In support of the Petitions, petitioner Nguyen submitted a written statement, proof of continuing education, and support letters. In the Petitions and at hearing, petitioner Nguyen explained the circumstances underlying the discipline, petitioners' rehabilitation efforts since, and the reasons she is seeking early termination of probation.

6. Petitioners have not previously applied for termination of probation. They have completed over three years of probation and have less than two years remaining. Petitioners are in compliance with the terms and conditions of probation. They have timely submitted all quarterly reports, are current on paying the probation monitoring costs, and have a remaining reimbursement balance of \$5,740. Petitioner Sun Pharmacy's employees are aware of its permit's probationary status and the terms and conditions of probation. Petitioner Nguyen has completed an ethics course and currently practices with supervision.

7. Petitioner Nguyen admitted her wrongdoing. Petitioner Nguyen explained the circumstances underlying the discipline occurred due to her inexperience as a PIC of an independent pharmacy. Prior to owning and operating petitioner Sun Pharmacy in 2016, petitioner Nguyen had practiced as a staff pharmacist and PIC at Longs Drugs and CVS. When she opened her own pharmacy, she believed she could also perform the duties of a PIC there. However, operating petitioner Sun Pharmacy and acting as its PIC was challenging for petitioner Nguyen. She realized there were many things to track, including storage of medications, quality assurance, and inventory. Petitioner Nguyen admitted she failed to obtain a waiver to store medications off-site. She also admitted she failed to return medications which were not picked up by patients. When patients fail to pick up medications, a pharmacy must return them so insurance companies are not billed for those prescriptions. Petitioner Nguyen admitted that on many occasions, over 30 days elapsed after a patient's failure to pick up before petitioners finally returned the medications.

8. Petitioner Nguyen also explained the circumstances relating to the medications from CVS that she did not return. A patient needed medications which were not in stock at petitioner Sun Pharmacy. Petitioner Nguyen, at the time also a

staff pharmacist at CVS, inquired whether CVS had the medications in stock. CVS did. Petitioner Nguyen recommended the patient fill her prescriptions at CVS. However, this patient did not speak English well and asked petitioner Nguyen to assist her. To help the patient, petitioner Nguyen took the medications from CVS, brought them to petitioner Sun Pharmacy, and filled the patient's prescriptions. Petitioner Nguyen explained she planned to later return the medications to CVS once petitioner Sun Pharmacy received its own shipment of those medications. At hearing, petitioner Nguyen acknowledged she should not have assisted the patient in this manner.

9. Petitioner Nguyen has improved her pharmacy practice to address the Board's concerns. She developed policies and procedures on pharmacy operations, including compounding and inventory. To ensure medications not picked up are timely returned, petitioner Nguyen conducts weekly checks of pending medications and identifies which ones must be returned. Acknowledging her capabilities, petitioner Nguyen no longer practices as a PIC. As a supervised staff pharmacist at petitioner Sun Pharmacy, petitioner Nguyen fills approximately 200 prescriptions per day. She does not perform any compounding. Petitioners have passed every random Board inspection since probation began. Petitioner Nguyen plans to ensure she is updated on, and complying with, the laws governing the pharmacy practice and intends to consult Board staff or the California Pharmacists Association with any questions.

10. Petitioner Nguyen explained she pursued practice as a pharmacist to serve her community. During the COVID-19 pandemic, petitioner Sun Pharmacy vaccinated approximately 25,000 people from petitioners' community. Inspired to continue this work, petitioners applied to participate in California's Vaccines for Children (VFC) and Vaccines for Adults (VFA) programs. However, because of petitioners' probationary status, the application has been placed on hold. In the

meantime, petitioners participate in health fairs and provide vaccinations, education about vaccinations, and blood pressure and blood sugar monitoring to the community. The most recent health fair they attended was in September 2024. Petitioners are seeking early termination of probation primarily to allow them to participate in VFC and VFA to expand their service to their community.

SUPPORT LETTERS

11. Than Le, Pharm.D., wrote a support letter. She is currently the PIC of petitioner Sun Pharmacy. Dr. Le knows about the Board discipline and underlying circumstances and is petitioner Nguyen's supervisor. Since probation began, Dr. Le has worked with petitioner Nguyen to improve pharmacy practice. Together, they developed systems and processes to keep records, establish quality assurance, track insurance claim reversals, conduct self-assessments, audit inventory, label drugs, and obtain physician approvals on refills, authorizations, and medication changes. Dr. Le believes petitioner Nguyen has made "significant improvements" and "substantial efforts" to address the Board's concerns.

12. Vincent Nguyen, Pharm.D., wrote a support letter. He has been a staff pharmacist at petitioner Sun Pharmacy since May 2023. Dr. Nguyen knows about the Board discipline and underlying circumstances. He explained that the pharmacy's policies and procedures are organized in binders that are readily accessible by staff. Any issues are addressed in regular staff huddles and meetings "to avoid making mistakes that may harm or impact patient care and safety."

13. Nina Hanh Nguyen, Pharm.D., wrote a support letter. She was a staff pharmacist at petitioner Sun Pharmacy from July 2018 until December 2022. Dr. N. Nguyen knows about the Board discipline and underlying circumstances. Dr. N.

Nguyen describes how, since probation began, the pharmacy “cleaned up our shelves, labeled all medicine bottles correctly, stored prescriptions in designated areas, and submitted all required paperworks [*sic*] in a timely manner.”

14. Laimi Cong-Huyen wrote a support letter. She knows about the Board discipline. Ms. Cong-Huyen has known petitioner Nguyen for over 20 years. She praises petitioner Nguyen’s “remarkable integrity, dedication, and community involvement.” As a result, she “earned the respect and admiration of many in [the] community.”

15. Phillip Huynh wrote a support letter. He knows about the Board discipline. Mr. Huynh has known petitioner Nguyen in the community for “many years” and is also a “long-time client” of petitioner Sun Pharmacy. Mr. Huynh praises petitioner Nguyen’s “generosity and dedication to helping others.”

LEGAL CONCLUSIONS

Timeliness of Petition and Review of Decision

1. A licensee who 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, petitioner Nguyen filed the Petitions in October 2024, over two years after probation began. The Petitions are therefore timely.

2. A petition may be heard by a committee of the Board sitting with an ALJ. Where a petition is thus heard, the decision shall be subject to review by the Board

under Government Code section 11517. (Bus. & Prof. Code, § 4309, subd. (c).) Here, the decision is subject to review by the Board.

Propriety of Early Termination of Probation

3. A petitioner has the burden to prove by clear and convincing evidence she has rehabilitated herself and is entitled to early termination of probation. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084.) A petitioner must present strong proof of rehabilitation, sufficient to overcome the former adverse determination. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

4. In considering a petition for early termination of probation, the Board may assess the following relevant factors: (1) the offense for which petitioners were disciplined; (2) petitioners' activities since the disciplinary action was taken; (3) petitioners' general reputation for truth and professional responsibility; and (4) petitioners' rehabilitative efforts. (Bus. & Prof. Code, § 4309, subd. (d).)

5. Petitioners' misconduct is serious. By petitioner Nguyen's admission, she was remiss in operating the pharmacy in a manner compliant with the laws governing the pharmacy practice. Among other things, petitioner Nguyen failed to secure necessary permits, reverse billed claims, and ensure billed quantities were consistent with dispensed quantities. Petitioner Nguyen also disregarded safeguards on the handling of controlled substances by obtaining medications from another pharmacy to provide to a patient of petitioner Sun Pharmacy. However, petitioner Nguyen's wrongdoing occurred over six years ago, and she has not engaged in misconduct since.

6. To her credit, petitioner Nguyen accepted responsibility and expressed remorse for her wrongdoing. She took ownership of her failures to comply with pharmacy laws and made sustained changes to operations of the pharmacy. Since probation began, petitioner Nguyen has ceased practicing as the PIC and developed and implemented policies and procedures on record keeping, quality assurance, insurance claim reversals, self-assessments, inventory, and drug labeling. Should any issues or questions arise, petitioners have resources available to them, including Board staff and the California Pharmacists Association. Thus far, petitioners have passed all Board inspections. Petitioner Sun Pharmacy has been operating, and petitioner Nguyen has been practicing, without incident.

7. Moreover, petitioners' desire for early termination of probation is motivated by community service. During the COVID-19 pandemic, petitioners served their community by providing vaccinations to over 25,000 individuals. Petitioner Nguyen participates in health fairs and provides education about vaccinations and checks on blood sugar and blood pressure. Petitioners would like to expand their community service by participating in the VFA and VFC programs. Terminating probation will enable petitioners to do so. Their desire to further serve their community is praiseworthy.

8. Petitioners have been fully compliant with the terms of probation, with the exception of full reimbursement of the Board's costs. Petitioners' diligent compliance with probation, safe practice and operation thus far, and community service are commendable. Clear and convincing evidence demonstrates petitioners are able to practice and operate in a manner consistent with the public health, safety, and welfare. Board monitoring is no longer necessary to protect the public and would be unduly punitive. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817 [the

purpose of license discipline is public protection, not punishment].) When all the evidence is considered, the Petitions should be granted. As a condition precedent to probation termination, petitioners shall pay in full the remaining balance of the Board's costs.

ORDER

On February 7, 2025, the Board of Pharmacy, Department of Consumer Affairs, adopted the attached Decision, which reflects the Committee's recommendation, as its own.

The Petitions for Early Termination of Probation of Sun Pharmacy, Inc., dba Sun Pharmacy, and Luu Phuong Nguyen are GRANTED. As a CONDITION PRECEDENT to probation termination, petitioners shall pay in full the remaining balance of the Board's costs of investigation and enforcement. Once such condition precedent is satisfied, probation shall be terminated.

This Decision shall become effective at 5:00 p.m. on March 20, 2025.

It is so ORDERED on February 18, 2025.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**SUN PHARMACY, INC., DBA SUN
PHARMACY; LUU PHUONG NGUYEN,
OWNER, CEO, CFO, SEC., TRES.
Pharmacy Permit No. PHY 54368; and**

**LUU PHUONG NGUYEN,
Pharmacist License No. RPH 58306,**

Respondents.

Agency Case No. 6998

OAH No. 2021010765

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 September 8, 2021.

It is so ORDERED on August 9, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with a large initial "S" and "O".

By

Seung W. Oh, Pharm.D.
Board President

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

12 In the Matter of the Accusation Against:

13 **SUN PHARMACY, INC., DBA SUN**
14 **PHARMACY; LUU PHUONG NGUYEN,**
15 **OWNER, CEO, CFO, SEC., TRES.**
16 **2559 S. King Rd. Ste. B10**
17 **San Jose, CA 95122**

18 **Pharmacy Permit No. PHY 54368**

19 **and**

20 **LUU PHUONG NGUYEN**
21 **1632 S. White Rd.**
22 **San Jose, CA 95127**

23 **Pharmacist License No. RPH 58306**

24 Respondents.

Case No. 6998

OAH No. 2021010765

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

25
26
27 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
28 entitled proceedings that the following matters are true:

1 **PARTIES**

2 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
3 (Board). She brought this action solely in her official capacity and is represented in this matter by
4 Rob Bonta, Attorney General of the State of California, by Joshua D. Johnson, Deputy Attorney
5 General.

6 2. Respondents Sun Pharmacy, Inc., dba Sun Pharmacy (Respondent Sun Pharmacy)
7 and Luu Phuong Nguyen (Respondent Nguyen) are represented in this proceeding by attorney
8 Zachary D. Wechsler Esq., whose address is: 21515 Hawthorne Blvd., Ste. 610, Torrance, CA
9 90503-6547.

10 3. On or about April 29, 2016, the Board issued Pharmacy Permit No. PHY 54368 to
11 Respondent Sun Pharmacy. The Pharmacy Permit was in full force and effect at all times relevant
12 to the charges brought in Accusation No. 6998, and will expire on April 1, 2022, unless renewed.

13 4. On or about May 8, 2006, the Board issued Pharmacist License No. RPH 58306 to
14 Respondent Nguyen. The Pharmacist License was in full force and effect at all times relevant to
15 the charges brought in Accusation No. 6998, and will expire on January 31, 2022, unless
16 renewed.

17 **JURISDICTION**

18 5. Accusation No. 6998 was filed before the Board, and is currently pending against
19 Respondents. The Accusation and all other statutorily required documents were properly served
20 on Respondents on November 10, 2020. Respondents timely filed its Notice of Defense
21 contesting the Accusation.

22 6. A copy of Accusation No. 6998 is attached as exhibit A and incorporated herein by
23 reference.

24 **ADVISEMENT AND WAIVERS**

25 7. Respondents have carefully read, fully discussed with counsel, and understand the
26 charges and allegations in Accusation No. 6998. Respondents have also carefully read, fully
27 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
28 Order.

8. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their 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.

9. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

10. Respondents admit the truth of each and every charge and allegation in Accusation No. 6998.

11. Respondent Sun Pharmacy agrees that its Pharmacy Permit is subject to discipline and it agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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

CONTINGENCY

13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or its counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw its 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.

14. 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.

15. 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.

16. 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:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist Permit No. PHY 54368 issued to Respondent Sun Pharmacy, and Pharmacist License No. RPH 58306 issued to Respondent Nguyen, are revoked. However, the revocations are stayed and Respondents are placed on probation for five (5) years on the following terms and conditions:

RESPONDENT SUN PHARMACY

1. Definition: Respondent Sun Pharmacy

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

2. Obey All Laws

Respondent Sun Pharmacy shall obey all state and federal laws and regulations.

Respondent Sun Pharmacy 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; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent Sun Pharmacy's pharmacy permit or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any dangerous drug, and/or dangerous device or controlled substance.

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

3. Report to the Board

Respondent Sun Pharmacy shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, Respondent Sun Pharmacy shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. Interview with the Board

Upon receipt of reasonable prior notice, Respondent Sun Pharmacy shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification

1 to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its
2 designee during the period of probation, shall be considered a violation of probation.

3 **5. Cooperate with Board Staff**

4 Respondent Sun Pharmacy shall timely cooperate with the board's inspection program and
5 with the board's monitoring and investigation of respondent's compliance with the terms and
6 conditions of the probation, including but not limited to: timely responses to requests for
7 information by board staff; timely compliance with directives from board staff regarding
8 requirements of any term or condition of probation; and timely completion of documentation
9 pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a
10 violation of probation.

11 **6. Reimbursement of Board Costs**

12 As a condition precedent to successful completion of probation, Respondent Sun Pharmacy
13 shall pay to the board, jointly and severally with Respondent Nguyen, its costs of investigation
14 and prosecution in the amount of \$30,650.

15 Respondents shall be permitted to pay these costs in a payment plan approved by the board
16 or its designee, so long as full payment is completed no later than one (1) year prior to the end
17 date of probation. There shall be no deviation from this schedule absent prior written approval by
18 the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a
19 violation of probation.

20 **Probation Monitoring Costs**

21 Respondent Sun Pharmacy shall pay any costs associated with probation monitoring as
22 determined by the board each and every year of probation. Such costs shall be payable to the
23 board on a schedule as directed by the board or its designee. Failure to pay such costs by the
24 deadline(s) as directed shall be considered a violation of probation.

25 **7. Status of License**

26 Respondent Sun Pharmacy shall, at all times while on probation, maintain current
27 Pharmacy Permit with the board. Failure to maintain current licensure shall be considered a
28 violation of probation.

1 If Respondent Sun Pharmacy's Pharmacy Permit expires or is cancelled by operation of law
2 or otherwise at any time during the period of probation, including any extensions thereof or
3 otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and
4 conditions of this probation not previously satisfied.

5 **8. License Surrender While on Probation/Suspension**

6 Following the effective date of this decision, should Respondent Sun Pharmacy wish to
7 discontinue business, Respondent Sun Pharmacy may tender the premises license to the board for
8 surrender. The board or its designee shall have the discretion whether to grant the request for
9 surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance
10 of the surrender of the license, Respondent Sun Pharmacy will no longer be subject to the terms
11 and conditions of probation.

12 Respondent Sun Pharmacy may not apply for any new license from the board for three (3)
13 years from the effective date of the surrender. Respondent Sun Pharmacy shall meet all
14 requirements applicable to the license sought as of the date the application for that license is
15 submitted to the board.

16 Respondent Sun Pharmacy further stipulates that it shall reimburse the board for its costs of
17 investigation and prosecution prior to the acceptance of the surrender.

18 **9. Sale or Discontinuance of Business**

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

27 **10. Notice to Employees**

28 Respondent Sun Pharmacy shall, upon or before the effective date of this decision, ensure

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

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

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

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

21 **12. Premises Open for Business**

22 Respondent shall remain open and engaged in its ordinary business as a pharmacy in
23 California for a minimum of 120 hours per calendar month. Any month during which this
24 minimum is not met shall toll the period of probation, i.e., the period of probation shall be
25 extended by one month for each month during which this minimum is not met. During any such
26 period of tolling of probation, Respondent Sun Pharmacy must nonetheless comply with all terms
27 and conditions of probation, unless respondent is informed otherwise in writing by the board or
28 its designee. If Respondent Sun Pharmacy is not open and engaged in its ordinary business as a

1 pharmacy for a minimum of 120 hours in any calendar month, for any reason (including
2 vacation), Respondent Sun Pharmacy shall notify the board in writing within ten (10) days of the
3 conclusion of that calendar month. This notification shall include at minimum all of the
4 following: the date(s) and hours Respondent Sun Pharmacy was open; the reason(s) for the
5 interruption or why business was not conducted; and the anticipated date(s) on which Respondent
6 Sun Pharmacy will resume business as required. Respondent Sun Pharmacy shall further notify
7 the board in writing with ten (10) days following the next calendar month during which
8 Respondent Sun Pharmacy is open and engaged in its ordinary business as a pharmacy in
9 California for a minimum of 120 hours. Any failure to timely provide such notification(s) shall
10 be considered a violation of probation.

11 **13. Posted Notice of Probation**

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

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

20 **14. Violation of Probation**

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

26 If Respondent Sun Pharmacy violates probation in any respect, the board, after giving
27 respondent notice and an opportunity to be heard, may revoke probation and carry out the
28 disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed

1 against Respondent Sun Pharmacy during probation, the board shall have continuing jurisdiction
2 and the period of probation shall be automatically extended until the petition to revoke probation
3 or accusation is heard and decided.

4 **15. Completion of Probation**

5 Upon written notice by the board or its designee indicating successful completion of
6 probation, Respondent Sun Pharmacy's Pharmacy Permit will be fully restored.

7 **16. No Additional Ownership or Management of Licensed Premises**

8 Respondent Sun Pharmacy shall not acquire any additional ownership, legal or beneficial
9 interest in, nor serve as a manager, administrator, member, officer, director, associate, partner or
10 any business, firm, partnership, or corporation currently or hereinafter licensed by the board
11 except as approved by the board or its designee. Violations of this restriction shall be considered a
12 violation of probation.

13 **RESPONDENT NGUYEN**

14 **1. Obey All Laws**

15 Respondent Nguyen shall obey all state and federal laws and regulations.

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

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

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

2 **2. Report to the Board**

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

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

12 **3. Interview with the Board**

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

18 **4. Cooperate with Board Staff**

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

25 **5. Continuing Education**

26 Respondent Nguyen shall provide evidence of efforts to maintain skill and knowledge as a
27 pharmacist as directed by the board or its designee.
28

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

2 During the period of probation, Respondent Nguyen shall notify all present and prospective
3 employers of the decision in case number 6998 and the terms, conditions and restrictions imposed
4 on Respondent Nguyen 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 Nguyen shall report to the board in writing the
7 name, physical address, and mailing address of each of Entity employer(s), and the name(s) and
8 telephone number(s) of all of Respondent Nguyen's direct supervisor(s), as well as any
9 pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other
10 compliance supervisor(s) and the work schedule, if known. Respondent Nguyen shall also
11 include the reason(s) for leaving the prior employment. Respondent Nguyen shall sign and return
12 to the board a written consent authorizing the board or its designee to communicate with all of
13 Respondent Nguyen's employer(s) and supervisor(s), and authorizing those employer(s) or
14 supervisor(s) to communicate with the board or its designee, concerning Respondent Nguyen's
15 work status, performance, and monitoring. Failure to comply with the requirements or deadlines
16 of this condition shall be considered a violation of probation.

17 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
18 Respondent Nguyen undertaking any new employment, Respondent Nguyen shall cause (a) direct
19 supervisor, (b) pharmacist-in-charge, designated representative-in-charge, responsible manager,
20 or other compliance supervisor, and (c) the owner or owner representative of employer, to report
21 to the board in writing acknowledging that the listed individual(s) has/have read the decision in
22 case number 6998, and terms and conditions imposed thereby. If one person serves in more than
23 one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be Respondent
24 Nguyen's responsibility to ensure that these acknowledgment(s) are timely submitted to the
25 board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c)
26 during the term of probation, Respondent Nguyen shall cause the person(s) taking over the role(s)
27 to report to the board in writing within fifteen (15) days of the change acknowledging that he or
28 she has read the decision in case number 6998, and the terms and conditions imposed thereby.

1 If Respondent Nguyen works for or is employed by or through an employment service,
2 respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed
3 by the board of the decision in case number 6998, and the terms and conditions imposed thereby
4 in advance of Respondent Nguyen commencing work at such licensed entity. A record of this
5 notification must be provided to the board upon request.

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

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

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

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

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

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

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

26 During the period of probation, Respondent Nguyen shall not supervise any intern
27 pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible
28 manager or other compliance supervisor of any entity licensed by the board, nor serve as a

consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent Nguyen shall pay to the board, jointly and severally with Respondent Sun Pharmacy, its costs of investigation and prosecution in the amount of \$30,650.

Respondents shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

10. Probation Monitoring Costs

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

11. Status of License

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

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

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent Nguyen cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,

1 respondent may relinquish her Pharmacist License, including any indicia of licensure issued by
2 the board, along with a request to surrender the license. The board or its designee shall have the
3 discretion whether to accept the surrender or take any other action it deems appropriate and
4 reasonable. Upon formal acceptance of the surrender of the license, Respondent Nguyen will no
5 longer be subject to the terms and conditions of probation. This surrender constitutes a record of
6 discipline and shall become a part of the Respondent Nguyen's license history with the board.

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

14 **13. Practice Requirement – Extension of Probation**

15 Except during periods of suspension, Respondent Nguyen shall, at all times while on
16 probation, be employed as a Pharmacist in California for a minimum of 120 hours per calendar
17 month. Any month during which this minimum is not met shall extend the period of probation by
18 one month. During any such period of insufficient employment, Respondent Nguyen must
19 nonetheless comply with all terms and conditions of probation, unless Respondent Nguyen
20 receives a waiver in writing from the board or its designee.

21 If Respondent Nguyen does not practice as a Pharmacist in California for the minimum
22 number of hours in any calendar month, for any reason (including vacation), Respondent Nguyen
23 shall notify the board in writing within ten (10) days of the conclusion of that calendar month.
24 This notification shall include at least: the date(s), location(s), and hours of last practice; the
25 reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which
26 Respondent Nguyen will resume practice at the required level. Respondent Nguyen shall further
27 notify the board in writing within ten (10) days following the next calendar month during which
28

Respondent Nguyen practices as a Pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

14. Violation of Probation

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

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

15. Completion of Probation

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

16. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, Respondent Nguyen shall enroll in a course in ethics, at Respondent Nguyen's expense, approved in advance by the board or its designee that complies with Title 16 California Code of Regulations section 1773.5.

Respondent Nguyen shall provide proof of enrollment upon request. Within five (5) days of completion, Respondent Nguyen shall submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll in an approved ethics course, to initiate the course during the first year of probation, to successfully complete it before the end of the second year of probation, or to timely submit proof of completion to the board or its designee, shall be considered a violation of probation.

17. Supervised Practice

Within thirty (30) days of the effective date of this decision, Respondent Nguyen shall submit to the board or its designee, for prior approval, the name of a Pharmacist by and not on probation with the board, to serve as Respondent Nguyen's practice supervisor. As part of the documentation submitted, Respondent Nguyen shall cause the proposed practice supervisor to report to the board in writing acknowledging that he or she has read the decision in case number 6998, and is familiar with the terms and conditions imposed thereby, including the level of supervision required by the board or its designee. This level will be determined by the board or its designee, will be communicated to the respondent on or before the effective date of this decision and shall be one of the following:

Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Respondent Nguyen may practice only under the required level of supervision by an approved practice supervisor. If, for any reason, including change of employment, Respondent Nguyen is no longer supervised at the required level by an approved practice supervisor, within ten (10) days of this change in supervision Respondent Nguyen shall submit to the board or its designee, for prior approval, the name of a Pharmacist by and not on probation with the board, to serve as Respondent Nguyen's replacement practice supervisor. As part of the documentation submitted, Respondent Nguyen shall cause the proposed replacement practice supervisor to report to the board in writing acknowledging that he or she has read the decision in case number 6998,

1 and is familiar with the terms and conditions imposed thereby, including the level of supervision
2 required.

3 Any of the following shall result in the automatic suspension of practice by Respondent
4 Nguyen and shall be considered a violation of probation:

5 Failure to nominate an initial practice supervisor, and to have that practice supervisor report
6 to the board in writing acknowledging the decision, terms and conditions, and supervision level,
7 within thirty (30) days;

8 Failure to nominate a replacement practice supervisor, and to have that practice supervisor
9 report to the board in writing acknowledging the decision, terms and conditions, and supervision
10 level, within ten (10) days;

11 Practicing in the absence of an approved practice supervisor beyond the initial or
12 replacement nomination period; or

13 Any failure to adhere to the required level of supervision.

14 Respondent Nguyen shall not resume practice until notified in writing by the board or its
15 designee.

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

25 During any suspension, Respondent Nguyen shall not engage in any activity that requires
26 the professional judgment and/or licensure as a Pharmacist. Respondent Nguyen shall not direct
27 or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling,
28 or retailing of dangerous drugs and/or dangerous devices or controlled substances.

1 Failure to comply with any suspension shall be considered a violation of probation.

2 **18. No New Ownership or Management of Licensed Premises**

3 Respondent Nguyen shall not acquire any new ownership, legal or beneficial interest nor
4 serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any
5 additional business, firm, partnership, or corporation licensed by the board. If Respondent
6 Nguyen currently owns or has any legal or beneficial interest in, or serves as a manager,
7 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
8 partnership, or corporation currently or hereinafter licensed by the board, Respondent Nguyen
9 may continue to serve in such capacity or hold that interest, but only to the extent of that position
10 or interest as of the effective date of this decision. Violation of this restriction shall be considered
11 a violation of probation.

12 ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Zachary D. Wechsler Esq. I understand the stipulation and the effect it will have on my Original Permit, and Pharmacist-in-Charge. 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: _____
SUN PHARMACY, INC., DBA SUN PHARMACY
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Zachary D. Wechsler Esq. I understand the stipulation and the effect it will have on my 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: _____
LUU PHUONG NGUYEN
Respondent


I have read and fully discussed with Respondents Sun Pharmacy, Inc., dba Sun Pharmacy and Luu Phuong Nguyen the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____
ZACHARY D. WECHSLER ESQ.
Attorney for Respondent

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Zachary D. Wechsler Esq. I understand the stipulation and the effect it will have on my Original Permit, and Pharmacist-in-Charge. 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: 06/16/2021


SUN PHARMACY, INC., DBA SUN PHARMACY
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Zachary D. Wechsler Esq. I understand the stipulation and the effect it will have on my 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: 06/16/2021


LUU PHUONG NGUYEN
Respondent

I have read and fully discussed with Respondents Sun Pharmacy, Inc., dba Sun Pharmacy and Luu Phuong Nguyen the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: June 16, 2021

Zachary D. Wechsler
ZACHARY D. WECHSLER ESQ.
Attorney for Respondent
Digitally signed by Zachary D. Wechsler
DN: cn=Zachary D. Wechsler, o=Law
Office of Zachary D. Wechsler, APC,
ou, email=zdw@zdwlaw.com, c=US
Date: 2021.06.16 13:23:31 -07'00'

ENDORSEMENT

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

DATED: June 16, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
CHAR SACHSON
Supervising Deputy Attorney General



JOSHUA D. JOHNSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6998

1 XAVIER BECERRA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
3 JOSHUA D. JOHNSON
Deputy Attorney General
4 State Bar No. 244774
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3876
6 Facsimile: (415) 703-5480
E-mail: Joshua.Johnson@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6998

13 **SUN PHARMACY, INC., DBA SUN**
PHARMACY; LUU PHUONG NGUYEN,
14 **OWNER, CEO, CFO, SEC., TRES.**
15 **2559 S. King Rd. Ste. B10**
San Jose, CA 95122

ACCUSATION

16 **Pharmacy Permit No. PHY 54368**

17 **and**

18 **LUU PHUONG NGUYEN**
1632 S. White Rd.
19 **San Jose, CA 95127**

20 **Pharmacist License No. RPH 58306**

21 Respondents.

22
23 **PARTIES**

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

26 2. On or about April 29, 2016, the Board of Pharmacy issued Pharmacy Permit Number
27 PHY 54368 to Sun Pharmacy, Inc., dba Sun Pharmacy (Respondent Sun Pharmacy.) The
28

1 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein
2 and will expire on April 1, 2021, unless renewed. Board records reflect that Luu Phuong Nguyen
3 was the 100% owner since April 20, 2016, and has been the Chief Executive Officer, 100%
4 Shareholder, Secretary and Treasurer/Chief Financial Officer since December 16, 2016.
5 Respondent Luu Phuong Nguyen (Respondent Nguyen), holder of Pharmacist License No. RPH
6 58306, has served as Pharmacist-in-Charge for Respondent Sun Pharmacy since or about April
7 29, 2016.

8 3. On or about May 8, 2006, the Board of Pharmacy issued Pharmacist License Number
9 RPH 58306 to Respondent Nguyen. The Pharmacist License was in full force and effect at all
10 times relevant to the charges brought herein and will expire on January 31, 2022, unless renewed.

11 **JURISDICTION**

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

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

18 6. Section 4300, subdivision (a), of the Code states that “(a) Every license issued may be
19 suspended or revoked.”

20 7. Section 4300.1 of the Code states:

21 The expiration, cancellation, forfeiture, or suspension of a board-issued license
22 by operation of law or by order or decision of the board or a court of law, the
23 placement of a license on a retired status, or the voluntary surrender of a license by a
24 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

25 **STATUTORY PROVISIONS**

26 8. Section 4037 of the Code states:

27 (a) “Pharmacy” means an area, place, or premises licensed by the board in
28 which the profession of pharmacy is practiced and where prescriptions are
compounded. “Pharmacy” includes, but is not limited to, any area, place, or

premises described in a license issued by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail.

(b) "Pharmacy" shall not include any area in a facility licensed by the State Department of Public Health where floor supplies, ward supplies, operating room supplies, or emergency room supplies of dangerous drugs or dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

9. Section 4081 of the Code states:

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

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

10. Section 4105 of the Code states:

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

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative on duty, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

1 (e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon
2 written request, grant to a licensee a waiver of the requirements that the records
3 described in subdivisions (a), (b), and (c) be kept on the licensed premises.

4 (2) A waiver granted pursuant to this subdivision shall not affect the board's
5 authority under this section or any other provision of this chapter.

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

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

9 12. Section 4169 of the Code states:

10 (a) A person or entity shall not do any of the following:

11 ...

12 (3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or
13 reasonably should have known were misbranded, as defined in Section 111335 of the
14 Health and Safety Code.

15 ...

16 (5) Fail to maintain records of the acquisition or disposition of dangerous drugs
17 or dangerous devices for at least three years.

18 ...

19 13. Section 4201 of the Code states:

20 ...

21 (f) Notwithstanding any other law, the pharmacy license shall authorize the
22 holder to conduct a pharmacy. The license shall be renewed annually and shall not
23 be transferable.

24 (g) Notwithstanding any other law, the wholesaler license shall authorize the
25 holder to wholesale dangerous drugs and dangerous devices. The license shall be
26 renewed annually and shall not be transferable.

27 (h) Notwithstanding any other law, the third-party logistics provider license
28 shall authorize the holder to provide or coordinate warehousing, distribution, or other
similar services of dangerous drugs and dangerous devices. The license shall be
renewed annually and shall not be transferable.

(i) Notwithstanding any other law, the veterinary food-animal drug retailer
license shall authorize the holder to conduct a veterinary food-animal drug retailer
and to sell and dispense veterinary food-animal drugs as defined in Section 4042.

(j) For licenses referred to in subdivisions (f), (g), (h), and (i), any change in
the proposed beneficial ownership interest shall be reported to the board within 30
days thereafter upon a form to be furnished by the board.

14. Section 4301 of the Code states:

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

...

(b) Incompetence.

(c) Gross negligence.

...

(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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

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

...

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

...

15. Section 4306.5 of the Code states:

Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

...

16. Section 4307 of the Code states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had

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

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

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

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

9 (c) The provisions of subdivision (a) may be alleged in any pleading filed
10 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
the Government Code. However, no order may be issued in that case except as to a
11 person who is named in the caption, as to whom the pleading alleges the applicability
of this section, and where the person has been given notice of the proceeding as
12 required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
the Government Code. The authority to proceed as provided by this subdivision
13 shall be in addition to the board's authority to proceed under Section 4339 or any
other provision of law.

14 17. Section 4333 of the Code states:

15 (a) All prescriptions filled by a pharmacy and all other records required by
16 Section 4081 shall be maintained on the premises and available for inspection by
authorized officers of the law for a period of at least three years. In cases where the
17 pharmacy discontinues business, these records shall be maintained in aboard-licensed
facility for at least three years.

18 (b) Any person who willfully fails to comply with subdivision (a) is guilty of a
19 misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding
two hundred dollars (\$200). Any person convicted of a second or subsequent offense
20 shall be punished by a fine of not less than two hundred dollars (\$200) and not more
than four hundred dollars (\$400).

21 (c) (1) Notwithstanding subdivisions (a) and (b), the board may, upon written
22 request, grant a waiver of the requirement that the records described in subdivisions
(a) and (b) be maintained on the licensed premises or, in the event the pharmacy
23 discontinues business, that the records be maintained in a board licensed facility. A
person who maintains records in compliance with that waiver is not subject to the
24 penalties set forth in subdivision (b).

25 (2) A waiver granted pursuant to this subdivision shall not affect the board's
authority under this section or any other provision of this chapter.

26 18. Section 4342 of the Code states:

27 (a) The board may institute any action or actions as may be provided by law
28 and that, in its discretion, are necessary, to prevent the sale of pharmaceutical
preparations and drugs that do not conform to the standard and tests as to quality and

strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

...

19. Health and Safety Code section 111335 states:

Any drug or device is misbranded if its labeling or packaging does not conform to the requirements of Chapter 4 (commencing with Section 110290).

20. Health and Safety Code section 111440 states:

It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded.

REGULATORY PROVISIONS

21. California Code of Regulations, title 16, section 1707 states:

(a) Pursuant to subdivision (e) of Section 4105 of the Business and Professions Code and subdivision (c) of Section 4333 of the Business and Professions Code, a waiver shall be granted to any entity licensed by the board for off-site storage of the records described in subdivisions (a), (b) and (c) of Section 4105 of the Business and Professions Code unless the applicant has, within the preceding five years, failed to produce records pursuant to Section 4081 of the Business and Professions Code or has falsified records covered by Section 4081 of the Business and Professions Code.

...

22. California Code of Regulations, title 16, section 1711 states:

...

(d) Each pharmacy shall use the findings of its quality assurance program to develop pharmacy systems and workflow processes designed to prevent medication errors. An investigation of each medication error shall commence as soon as is reasonably possible, but no later than 2 business days from the date the medication error is discovered. All medication errors discovered shall be subject to a quality assurance review.

(e) The primary purpose of the quality assurance review shall be to advance error prevention by analyzing, individually and collectively, investigative and other pertinent data collected in response to a medication error to assess the cause and any contributing factors such as system or process failures. A record of the quality assurance review shall be immediately retrievable in the pharmacy. The record shall contain at least the following:

1. the date, location, and participants in the quality assurance review;
 2. the pertinent data and other information relating to the medication error(s) reviewed and documentation of any patient contact required by subdivision (c);
 3. the findings and determinations generated by the quality assurance review;
- and,

4. recommend changes to pharmacy policy, procedure, systems, or processes, if any.

The pharmacy shall inform pharmacy personnel of changes to pharmacy policy, procedure, systems, or processes made as a result of recommendations generated in the quality assurance program.

...

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

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

(b) In addition to the self-assessment required in subdivision (a) of this section, the pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

(1) A new pharmacy permit has been issued, or

...

24. California Code of Regulations, title 16, section 1716 states:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

25. California Code of Regulations, title 16, section 1735.5 states:

(a) Any pharmacy engaged in compounding shall maintain written policies and procedures for compounding that establishes procurement procedures, methodologies for the formulation and compounding of drugs, facilities and equipment cleaning, maintenance, operation, and other standard operating procedures related to compounding. Any material failure to follow the pharmacy's written policies and procedures shall constitute a basis for disciplinary action.

(b) The policies and procedures shall be reviewed and such review shall be documented on an annual basis by the pharmacist-in-charge. The policies and procedures shall be updated whenever changes in policies and procedures are implemented.

(c) The policies and procedures shall include at least the following:

(1) Procedures for notifying staff assigned to compounding duties of any changes in policies or procedures.

(2) A written plan for recall of a dispensed compounded drug preparation where subsequent information demonstrates the potential for adverse effects with continued

1 use. The plan shall ensure that all affected doses can be accounted for during the
2 recall and shall provide steps to identify which patients received the affected lot or
3 compounded drug preparation(s).

4 (3) Procedures for maintaining, storing, calibrating, cleaning, and disinfecting
5 equipment used in compounding, and for training on these procedures as part of the
6 staff training and competency evaluation process.

7 (4) Procedures for evaluating, maintaining, certifying, cleaning, and
8 disinfecting the facility (physical plant) used for compounding, and for training on
9 these procedures as part of the staff training and competency evaluation process.

10 (5) Documentation of the methodology used to validate integrity, potency,
11 quality, and labeled strength of compounded drug preparations. The methodology
12 must be appropriate to compounded drug preparations.

13 (6) Documentation of the methodology and rationale or reference source used
14 to determine appropriate beyond use dates for compounded drug preparations.

15 (7) Dates and signatures reflecting all annual reviews of the policies and
16 procedures by the pharmacist-in-charge.

17 (8) Dates and signatures accompanying any revisions to the policies and
18 procedures approved by the pharmacist-in-charge.

19 (9) Policies and procedures for storage of compounded drug preparations in the
20 pharmacy and daily documentation of all room, refrigerator, and freezer temperatures
21 within the pharmacy.

22 (10) Policies and procedures regarding ensuring appropriate functioning of
23 refrigeration devices, monitoring refrigeration device temperatures, and actions to
24 take regarding any out of range temperature variations within the pharmacy.

25 (11) Policies and procedures for proper garbing when compounding with
26 hazardous products. This shall include when to utilize double shoe covers.

27 **COST RECOVERY**

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

FIRST CAUSE FOR DISCIPLINE

(Failure to Obtain Waiver for Off-Site Storage)

27 27. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action
28 under Code section 4105, subdivision (e) and/or Code section 4333, subdivision (c), in
combination with California Code of Regulations, title 16, section 1707, subdivision (a), in that

1 Respondents failed to obtain a waiver for off-site storage of records. The circumstances are as
2 follows:

3 28. On or about May 1, 2018, Respondents failed to obtain an off-site waiver for off-site
4 records storage prior to moving records off the licensed premises.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Initiate a Quality Assurance Record)**

7 29. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action
8 under Code section 4301, subdivision (j) and/or (o), and/or Code section 4113, subdivision (c), in
9 combination with California Code of Regulations, title 16, section 1711, subdivisions (d) and/or
10 (e), in that Respondent Sun Pharmacy failed to use the findings of its quality assurance program
11 to develop pharmacy systems and workflow processes designed to prevent medication errors,
12 and/or failed to maintain records related to dispensing error for at least one year from the date the
13 record was created. The circumstances are as follows:

14 30. On or about December 6, 2017, Respondents failed to initiate a quality assurance
15 record related to a dispensing error for the incorrect quantity dispensed to Patient XT after
16 Respondent Nguyen was informed of the error and had to adjust five claims.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Failure to Maintain Compounding Policies and Procedures)**

19 31. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action
20 under Code section 4301, subdivision (j) and/or (o), and/or Code section 4113, subdivision (c), in
21 combination with California Code of Regulations, title 16, section 1735.5, subdivision (a) in that
22 Respondent Sun Pharmacy, while engaged in compounding, failed to maintain written policies
23 and procedures for compounding that establishes procurement procedures, methodologies for the
24 formulation and compounding of drugs, facilities and equipment cleaning, maintenance,
25 operation, and other standard operating procedures related to compounding. The circumstances
26 are as follows:

27 32. On or about June 18, 2018, Respondents failed to have compounding policies and
28 procedures and engaged in compounding for patient MT (RX#141222) without have any

1 compounding guidelines in place.

2 **FOURTH CAUSE FOR DISCIPLINE**

3 **(Misbranded Drugs)**

4 33. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action
5 under Code section 4169, subdivision (a)(3) and/or (a)(5), in conjunction with Code section 4342,
6 subdivision (a), and/or Health and Safety Code sections 111335 and 111440 in that Respondents
7 purchased, traded, sold, and/or transferred dangerous drugs that they knew or reasonably should
8 have known were misbranded. The circumstances are as follows:

9 34. On or about June 18, 2018, Respondent Sun Pharmacy had misbranded drugs in the
10 current inventory that were unlabeled and had no lot number or expiration date for the drugs.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Variations from Prescriptions)**

13 35. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action
14 under Code section 4301, subdivision (j) and/or (o), and/or Code section 4113, subdivision (c), in
15 combination with California Code of Regulations, title 16, section 1716 in that Respondents
16 deviated from the requirements of a prescription. The circumstances are as follows:

17 36. On or about June 18, 2018, Respondents deviated from a prescription order by
18 dispensing an incorrect quantity of insulin and then on a refill failed to get authorization from the
19 prescriber prior to changing the insulin from Lantus to Basaglar.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Failure to Complete a Self-Assessment)**

22 37. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action
23 under Code section 4301, subdivision (j) and/or (o), and/or Code section 4113, subdivision (c), in
24 combination with California Code of Regulations, title 16, section 1715, subdivisions (a) and
25 (b)(1) in that Respondent Nguyen, as the pharmacist-in-charge of Respondent Sun Pharmacy,
26 failed to complete a self-assessment of the pharmacy's compliance with federal and state
27 pharmacy law. The circumstances are as follows:

28 38. On or about June 18, 2018, Respondent Nguyen, as the pharmacist-in-charge of

Respondent Sun Pharmacy, failed to complete a self-assessment within 30 days of issuing a new permit.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

39. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action under Code section 4301, subdivisions (f) and/or (g) in that Respondents committed an act an act involving moral turpitude, dishonesty, fraud, deceit, or corruption, and/or knowingly made or signed a certificate or other document that falsely represented the existence or nonexistence of a state of facts. The circumstances are as follows:

40. On or about June 18, 2018, Respondent Sun Pharmacy failed to reverse 42 billed claims, submitted claims for incorrect day supplies, and provided a quantity different from the billed quantity for patient XT.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Dangerous Drugs)

41. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action under Code section 4081, subdivision (a), in conjunction with Code section 4105, subdivisions (a) and (c), in that Respondents failed to preserve for at least three years from the date of making and make open to inspection by authorized officers of the law all records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices. The circumstances are as follows:

42. On or about June 18, 2018, at the time of inspection by peace officers for the Board, Respondent Sun Pharmacy failed to have records of acquisition for numerous outdated sample drugs in the pharmacy.

NINTH CAUSE FOR DISCIPLINE

(Failure to Report Change in Beneficial Ownership)

43. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action under Code section 4201, subdivision (j), in that Respondent Nguyen failed to report to the Board within 30 days a change in beneficial ownership interest. The circumstances are as follows:

44. On or about December 14, 2016, Respondent Sun Pharmacy had a change in beneficial ownership in which Respondent Nguyen went from 100% owner to Chief Executive Officer, 100% Shareholder, Secretary and Treasurer/Chief Financial Officer. On or about June 18, 2018, Respondents reported the change to the Board, well after the 30 days deadline.

TENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Dangerous Drugs)

45. Respondent Sun Pharmacy and Respondent Nguyen are subject to disciplinary action under Code section 4081, subdivision (a), in conjunction with Code section 4105, subdivisions (a) and (c), in that Respondents failed to preserve for at least three years from the date of making and make open to inspection by authorized officers of the law all records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices. The circumstances are as follows:

46. On or about April 2016 to September 2016, Respondent Nguyen, as pharmacist-in-charge for Respondent Sun Pharmacy, took prescription drugs furosemide 40 mg #100, oxybutynin ER 5 mg #100, clindamycin 150 mg #100 and clindamycin lotion 60 mls from CVS Stores and failed to have a record of acquisition and disposition for them.

ELEVENTH CAUSE FOR DISCIPLINE

(Acts or Omissions by Pharmacist – Respondent Nguyen only)

47. Respondent Nguyen is subject to disciplinary action under Code section 4301, subdivision (b) and/or (c), and/or Code 4306.5, subdivision (a) in that Respondent Nguyen's conduct was unprofessional, and/or that she inappropriately exercised her education, training, or experience as a pharmacist. The circumstances are as follows:

48. On or about April 2016 to September 2016, Respondent Nguyen, while employed as a pharmacist at CVS Pharmacy #9257, located at 5170 Moorpark Ave, San Jose, CA 95129, and CVS Pharmacy #9812, located at 2514 Berryessa Road San Jose, CA 95132, took prescription drugs furosemide 40 mg #100, oxybutynin ER 5 mg #100, clindamycin 150 mg #100 and clindamycin lotion 60 mls from the CVS Stores without returning the product. As a result, Respondent violated CVS protocols for the transfer of the prescriptions drugs and failed to follow

1 industry norms related to chain of custody for prescription drugs.

2 **TWELFTH CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct – Respondent Nguyen only)**

4 49. Respondent Nguyen is subject to disciplinary action under Code section 4301,
5 subdivision (f), in that Respondent Nguyen’s conduct was unprofessional in that she committed
6 an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are
7 as follows:

8 50. On or about April 2016 to September 2016, Respondent Nguyen, while employed as
9 a pharmacist at CVS Pharmacy #9257, located at 5170 Moorpark Ave, San Jose, CA 95129, and
10 CVS Pharmacy #9812, located at 2514 Berryessa Road, San Jose, CA 95132, took prescription
11 drugs furosemide 40 mg #100, oxybutynin ER 5 mg #100, clindamycin 150 mg #100 and
12 clindamycin lotion 60 mls from the CVS Stores without returning the product. As a result,
13 Respondent violated CVS protocols for the transfer of the prescriptions drugs and failed to follow
14 industry norms related to chain of custody for prescription drugs.

15 **OTHER MATTERS**

16 51. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
17 PHY 54368 issued to Respondent Sun Pharmacy, Respondent Sun Pharmacy shall be prohibited
18 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
19 of a licensee for five years if Pharmacy Permit Number PHY 54368 is placed on probation or
20 until Pharmacy Permit Number PHY 54368 is reinstated if it is revoked.

21 52. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
22 RPH 58306 issued to Respondent Nguyen, Respondent Nguyen shall be prohibited from serving
23 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
24 for five years if Pharmacist License Number RPH 58306 is placed on probation or until
25 Pharmacist License Number RPH 58306 is reinstated if it is revoked.

26 **DISCIPLINE CONSIDERATIONS**

27 53. To determine the degree of discipline, if any, to be imposed on Respondent Nguyen,
28 Complainant alleges that on or about May 17, 2018, in a prior action, the Board of Pharmacy

1 issued Citation Number CI 2017 79776 for violation of Health and Safety Code section 11164,
2 subdivision (a), and California Code of Regulations, title 16, section 1761, subdivision (a), and
3 ordered Respondent to pay a fine of \$200.00. That Citation is now final.

4 **PRAYER**

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

7 1. Revoking or suspending Original Permit Number PHY 54368, issued to Sun
8 Pharmacy, Inc., dba Sun Pharmacy;

9 2. Revoking or suspending Pharmacist-in-Charge Number RPH 58306, issued to Luu
10 Phuong Nguyen;

11 3. Prohibiting Sun Pharmacy, Inc., dba Sun Pharmacy from serving as a manager,
12 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
13 Pharmacy Permit Number PHY 54368 is placed on probation or until Pharmacy Permit Number
14 PHY 54368 is reinstated if Pharmacy Permit Number PHY 54368 issued to Sun Pharmacy, Inc.,
15 dba Sun Pharmacy is revoked;

16 4. Prohibiting Luu Phuong Nguyen from serving as a manager, administrator, owner,
17 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
18 Number PHY 54368 is placed on probation or until Pharmacy Permit Number PHY 54368 is
19 reinstated if Pharmacy Permit Number PHY 54368 issued to Sun Pharmacy, Inc., dba Sun
20 Pharmacy is revoked;

21 5. Prohibiting Luu Phuong Nguyen from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
23 Number RPH 58306 is placed on probation or until Pharmacist License Number RPH 58306 is
24 reinstated if Pharmacist License Number RPH 58306 issued to Luu Phuong Nguyen is revoked;

25 6. Ordering Luu Phuong Nguyen and Sun Pharmacy, Inc., dba Sun Pharmacy to pay the
26 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
27 pursuant to Business and Professions Code section 125.3; and,

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

DATED: 10/30/2020

Signature on File

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

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