

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

In the Matter of the Accusation Against:

**RITE AID CORPORATION dba
RITE AID 5770,
Pharmacy Permit No. PHY 42426;**

and

**ROSEMARY HYUN JU KIM,
Pharmacy Technician Registration No. TCH 75505;**

and

**TRACY DIEUTHAO CHE-QUACH,
Pharmacist License No. RPH 42661,**

Respondents

Agency Case No. 7079

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Reapproval 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 December 22, 2021.

It is so ORDERED on November 22, 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 the first name "Seung" and last name "Oh" being clearly legible, and "W." in the middle.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
4 State Bar No. 203092
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9012
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

13 In the Matter of the Accusation Against:

14 **RITE AID CORPORATION,**
15 **DBA RITE AID 5770**
16 **5560 East Santa Ana Canyon Road**
Anaheim, CA 92807
Pharmacy Permit No. PHY 42426,

17 **ROSEMARY HYUN JU KIM**
18 **7825 E. Rainview Ct.**
19 **Anaheim, CA 92808**
Pharmacy Technician Registration No. TCH
75505,

20 **and**

21 **TRACY DIEUTHAO CHE-QUACH**
22 **8658 E. Silver Ridge**
Anaheim, CA 92808
23 **Pharmacist License No. RPH 42661**

24 Respondents.

Case No. 7079

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL AS TO RESPONDENT
TRACY DIEUPTHAO CHE-QUACH
ONLY

[Bus. & Prof. Code § 495]

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

28 ///

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 Dionne Mochon, Deputy Attorney
5 General.

6 2. Respondent Tracy Dieuthao Che-Quach (Respondent Che-Quach) is represented in
7 this proceeding by attorney Sweta H. Patel whose address is 1981 North Broadway, Suite 220,
8 Walnut Creek, CA 94596-3877.

9 **JURISDICTION**

10 3. On or about August 8, 1989, the Board issued Pharmacist License Number RPH
11 42661 to Respondent Che-Quach. The Pharmacist License was in full force and effect at all times
12 relevant to the charges brought herein and will expire on October 31, 2022, unless renewed.

13 4. Accusation No. 7079 was filed before the Board and is currently pending against
14 Respondent Che-Quach. The Accusation and all other statutorily required documents were
15 properly served on Respondent Che-Quach on April 16, 2021. Respondent Che-Quach timely
16 filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 7079 is
17 attached as Exhibit A and incorporated herein by reference.

18 **ADVISEMENT AND WAIVERS**

19 5. Respondent Che-Quach has carefully read, fully discussed with counsel, and
20 understands the charges and allegations in Accusation No. 7079. Respondent Che-Quach has also
21 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
22 Settlement and Disciplinary Order for Public Reproval.

23 6. Respondent Che-Quach is fully aware of her legal rights in this matter, including the
24 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
25 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the
26 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas
27 to compel the attendance of witnesses and the production of documents; the right to
28

1 reconsideration and court review of an adverse decision; and all other rights accorded by the
2 California Administrative Procedure Act and other applicable laws.

3 7. Respondent Che-Quach voluntarily, knowingly, and intelligently waives and gives up
4 each and every right set forth above.

5 **CULPABILITY**

6 8. Respondent Che-Quach understands and agrees that the charges and allegations in
7 Accusation No. 7079, if proven at a hearing, constitute cause for imposing discipline upon her
8 Pharmacy License.

9 9. For the purpose of resolving the Accusation without the expense and uncertainty of
10 further proceedings, Respondent Che-Quach agrees that, at a hearing, Complainant could
11 establish a factual basis for the charges in the Accusation, and that Respondent Che-Quach hereby
12 gives up its right to contest those charges.

13 10. Respondent Che-Quach agrees that her Pharmacy License is subject to discipline and
14 she agrees to be bound by the Disciplinary Order below.

15 **RESERVATION**

16 11. The admissions made by Respondent herein are only for the purposes of this
17 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
18 licensing agency is involved, and shall not be admissible in any other criminal or civil
19 proceeding.

20 **CONTINGENCY**

21 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
22 Che-Quach understands and agrees that counsel for Complainant and the staff of the Board of
23 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
24 without notice to or participation by Respondent Che-Quach or her counsel. By signing the
25 stipulation, Respondent Che-Quach understands and agrees that she may not withdraw her
26 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.
27 If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and
28 Disciplinary Order for Public Reproval shall be of no force or effect, except for this paragraph, it

1 shall be inadmissible in any legal action between the parties, and the Board shall not be
2 disqualified from further action by having considered this matter.

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

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

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

16 **DISCIPLINARY ORDER**

17 IT IS HEREBY ORDERED that Pharmacist License Number RPH 42661 issued to
18 Respondent Che-Quach shall be publicly reprovod by the Board of Pharmacy under Business and
19 Professions Code section 495 in resolution of Accusation No. 7079, attached as Exhibit A.

20 **Full Compliance.** As a resolution of the charges in Accusation No. 7079, this stipulated
21 settlement is contingent upon Respondent Che-Quach's full compliance with all conditions of this
22 Order. If Respondent Che-Quach fails to satisfy any of these conditions, such failure to comply
23 constitutes cause for discipline, including outright revocation, of Respondent Che-Quach's
24 Pharmacy License.

25 **ACCEPTANCE**

26 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
27 Reproval and have fully discussed it with my attorney, Sweta H. Patel. I understand the
28 stipulation and the effect it will have on my Pharmacy License. I enter into this Stipulated

Settlement and Disciplinary Order for Public Reapproval voluntarily, knowingly, and intelligently,
and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____

Tracy Dieuthao Che-Quach
Respondent

I have read and fully discussed with Respondent Tracy Dieuthao Che-Quach the terms and
conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
for Public Reapproval. I approve its form and content.

DATED: _____

SWETA H. PATEL
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby
respectfully submitted for consideration by the Board of Pharmacy of the Department of
Consumer Affairs.

DATED: _____

Respectfully submitted,

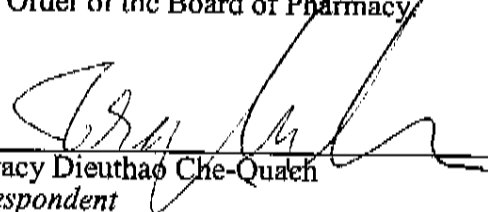
ROB BONTA
Attorney General of California
MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General

DIONNE MOCHON
Deputy Attorney General
Attorneys for Complainant

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1 Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently,
2 and agree to be bound by the Decision and Order of the Board of Pharmacy

3
4 DATED: 09/22/2021

5 
Tracy Dieuthao Che-Quach
Respondent

6 I have read and fully discussed with Respondent Tracy Dieuthao Che-Quach the terms and
7 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
8 for Public Reproval. I approve its form and content.

9
10 DATED: 9/24/2021

11 
SWETA H. PATEL
Attorney for Respondent


12 **ENDORSEMENT**

13 The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby
14 respectfully submitted for consideration by the Board of Pharmacy of the Department of
15 Consumer Affairs.

16
17 DATED: September 21, 2021

18 Respectfully submitted,

19 ROB BONTA
Attorney General of California
20 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General

21 
22 DIONNE MOCHON
23 Deputy Attorney General
24 Attorneys for Complainant

25
26
27 SD2021300143
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Exhibit A

Accusation No. 7079

MATTHEW RODRIQUEZ
Acting Attorney General of California
MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
DIONNE MOCHON
Deputy Attorney General
State Bar No. 203092
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9012
Facsimile: (619) 645-2061
E-mail: Dionne.Mochon@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 7079

**RITE AID CORPORATION
DBA RITE AID 5770
5560 East Santa Ana Canyon Road
Anaheim, CA 92807**

ACCUSATION

Pharmacy Permit No. PHY 42426,

**ROSEMARY HYUN JU KIM
7825 E. Rainview Ct.
Anaheim, CA 92808**

**Pharmacy Technician Registration No. TCH
75505,**

and

**TRACY DIEUTHAO CHE-QUACH
8658 E. Silver Ridge
Anaheim, CA 92808**

Pharmacist License No. RPH 42661

Respondents.

1 **PARTIES**

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

4 2. On or about February 21, 1997, the Board issued Pharmacy Permit Number PHY
5 42426 to Rite Aid Corporation, dba Rite Aid 5770 (Respondent Rite Aid). The Pharmacy Permit
6 was in full force and effect at all times relevant to the charges brought herein and will expire on
7 April 1, 2022, unless renewed.

8 3. On or about May 10, 2007, the Board issued Pharmacy Technician Registration
9 Number TCH 75505 to Rosemary Hyun Ju Kim (Respondent Kim). The Pharmacy Technician
10 Registration was in full force and effect at all times relevant to the charges brought herein and
11 will expire on July 31, 2022, unless renewed.

12 4. On or about August 8, 1989, the Board issued Pharmacist License Number RPH
13 42661 to Tracy Dieuthao Che-Quach (Respondent Che-Quach). The Pharmacist License was in
14 full force and effect at all times relevant to the charges brought herein and will expire on October
15 31, 2022, unless renewed.

16 **JURISDICTION**

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

19 6. Code section 4300 states, in pertinent part:

20 (a) Every license issued may be suspended or revoked.

21 . . .

22 7. Code section 4300.1 states:

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

STATUTORY PROVISIONS

8. Section 4022 of the Code states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in humans or animals, and includes the following:

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

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. Section 4081 of the Code states in part:

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

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

....

11. Section 4301 states, in pertinent part:

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:

....

(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."

....

(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.

12. Section 4307 states, in pertinent part

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

...

13. Section 4113 of the Code states, in pertinent part:

(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

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

....

14. Section 4332 of the Code states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

15. Section 11007 of the Health and Safety Code states:

'Controlled substance,' unless otherwise specified, means a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058.

16. Section 11171 of the Health and Safety Code states:

No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

17. Section 11173 of the Health and Safety Code states:

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

....

REGULATORY PROVISIONS

18. California Code of Regulations, title 16, section 1714, subdivision (b), states:

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

19. California Code of Regulations, title 16, section 1718, states

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

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

COST RECOVERY

20. Section 125.3 of the Code states, 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.

DRUG CLASSIFICATIONS/DEFINITIONS

21. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

Alprazolam is used to treat anxiety. "Xanax" is the brand name for alprazolam.

22. Phenergan with codeine is the brand name for promethazine with codeine, a Schedule V controlled substance pursuant to Health and Safety Code section 11058(c)(1) and a dangerous drug pursuant to Business and Professions Code section 4022.

23. DEA Form 106 is a form used by pharmacies to report controlled substance losses to the Drug Enforcement Agency (DEA) and the Board.

24. Positive variance indicates a shortage (purchases/acquisitions greater than sales/disposition) of on-hand stock. A negative variance indicates an overage (sold more than purchased).

FACTUAL ALLEGATIONS

25. At all times relevant herein, Respondent Kim was employed as a pharmacy technician for Respondent Rite Aid and Respondent Che-Quach was employed as the Pharmacist in Charge (PIC) for Respondent Rite Aid. On or around August 21, 2020, the Board received notification from Respondent Rite Aid's Regional Manager JB that Respondent Rite Aid terminated Respondent Kim due to an admission of diversion of controlled substances. Respondent Rite Aid

1 referred the theft of Phenergan with codeine to the Anaheim Police Department. The Board
2 initiated an investigation and found the following.

3 **Respondent Kim**

4 26. On or about July 30, 2020, Respondent Rite Aid initiated an investigation because of
5 information generated from high cycle counts on promethazine with codeine syrup. Specifically,
6 over a period of five weeks, seven bottles of promethazine with codeine were missing from
7 inventory with no justification or record of dispensing prescriptions or sales. The item continued
8 to be ordered weekly by telephone. As part of the internal investigation, Respondent Rite Aid
9 pulled time cards, telestock, store phone records, and store video. After reviewing the telestock
10 system, Respondent Kim's time records, and store security video, Respondent Rite Aid verified
11 that Respondent Kim placed the orders for promethazine with codeine by telephone. On or
12 around August 12, 2020, Respondent Rite Aid completed a second controlled count with
13 additional losses of promethazine with codeine. Respondent Rite Aid installed a covert camera
14 focused on the aisle where the promethazine with codeine was stored.

15 27. Respondent Rite Aid reviewed video for the period August 11, 2020 through August
16 12, 2020. The video showed that on August 11, 2020, Respondent Kim grabbed an empty staging
17 bottle used to fill liquid medication from a workbench. Respondent Kim placed the bottle in a
18 small basket used to stage filled prescriptions. Shortly thereafter, Respondent Kim returned to the
19 aisle, opened two promethazine with codeine bottles, and poured from each bottle into the bottle
20 she staged. Respondent Kim then returned the Promethazine with codeine bottles to the shelf and
21 hid the staged bottle behind medication on the same shelf. Shortly thereafter, Respondent Kim
22 returned to the aisle, grabbed the staged bottle she filled, and hid the staged bottle in a lunch box
23 located in a refrigerator used by employees. Once Respondent completed her shift, Respondent
24 retrieved her personal items and the lunch box with Promethazine with codeine. Respondent Kim
25 exited the store. On August 12, 2020, video showed Respondent Kim repeating the same actions
26 as the day before and leaving the store with an additional bottle of Promethazine with codeine.

27 28. On August 14, 2020, Respondent Rite Aid's Senior Leader of Investigations MI and
28 Regional Manager JB interviewed Respondent Kim. Respondent Kim admitted verbally, and

1 provided a written statement, that she took the Promethazine with codeine and sold the bottles on
2 the street. Respondent Kim admitted to stealing seven complete bottles of Promethazine with
3 codeine over the course of fourteen weeks. Shortly thereafter, the Anaheim Police Department
4 arrested Respondent Kim. Respondent Kim admitted to the police officer that she stole seven
5 bottles of Promethazine with codeine from Respondent Rite Aid.

6 **Respondent Che-Quach and Respondent Rite Aid**

7 29. On or about September 14, 2020, Board Inspector ED spoke with Respondent Che-
8 Quach and later received a written statement regarding Respondent Rite Aid's pharmacy
9 operations. Respondent Che-Quach confirmed that Respondent Rite Aid conducted cycle counts
10 for monthly controlled Schedule II and some of III to V substances, and conducted an annual
11 cycle count for all controlled substances. Respondent Che-Quach confirmed that all pharmacy
12 staff could place orders using the telestock system without pharmacist oversight. While
13 Respondent Rite Aid had three security cameras, Respondent Che-Quach did not monitor video
14 footage on a regular basis, describing the monitoring as "very rarely." Respondent Che-Quach's
15 written statement indicated that the pharmacy required the front store staff check all staff
16 belongings prior to exiting the pharmacy, which contradicted her verbal statement that "we don't
17 normally check because nobody is allowed to bring personal belongings inside the pharmacy."

18 30. On or around September 15, 2020, Board Inspector ED conducted a site inspection of
19 Respondent Rite Aid. As part of the inspection, Board Inspector ED interviewed Respondent
20 Che-Quach and Respondent Rite Aid Regional Manager JB. Board Inspector ED obtained a
21 stock on hand report from Respondent Che-Quach. Respondent Che-Quach confirmed that she
22 conducted an accurate count and accounted for Respondent Rite Aid's entire inventory that had
23 not been dispensed. The on-hand report reflected the following:

24 ///

25 ///

26 ///

27 ///

28 ///

Drug	Units	Ending Inventory (9/15/2020)
ZOLPIDEM TARTRATE 10 MG TABLET	Tablet	624
TRAMADOL HCL 50 MG TABLET	Tablet	1044
PROMETHAZINE-CODEINE SYRUP	milliliters	710
ALPRAZOLAM 2 MG TABLET	Tablet	255

31. During the investigation, Board Inspector ED obtained Respondent Rite Aid's DEA Form 106 dated July 27, 2020. Respondent Rite Aid reported the following as lost or stolen:

LIST OF CONTROLLED SUBSTANCES LOST OR STOLEN					
Trade Name of Substances or Preparation		NDC No.	Dosage Strength	Dosage Form	Total Quantity Lost or Stolen
1	Zolpidem Tartrate	65862016001	10 MG	TA	250
2	Zolpidem Tartrate	16714062201	10 MG	TA	69
3	Tramadol HCL	65162062710	50 MG	TA	117
4	Promethazine-Codeine	27808006502	6.25-10/5	ML	6287
5	Promethazine-Codeine	60432060616	6.25-10/5	ML	554
6	Alprazolam	59762371901	0.25 MG	TA	22
7	Alprazolam	00781106101	0.25 MG	TA	7
8	Alprazolam	00378400701	2 MG	TA	64
9	Phentermine HCL	13107006101	37.5 MG	TA	36

32. Respondent Rite Aid provided Board Inspector ED with the following Disposition Records for the period May 1, 2017, through September 15, 2020:

Drug	Units	Disposition
ZOLPIDEM TARTRATE 10 MG TABLET	Tablet	52,812
TRAMADOL HCL 50 MG TABLET	Tablet	84,985
PROMETHAZINE-CODEINE SYRUP	Milliliters	73,144
ALPRAZOLAM 2 MG TABLET	Tablet	16,142

33. Board Inspector ED determined that the audit conducted by Respondent Rite Aid incorrectly included previous DEA 106 forms and the stock on-hand counts were changed to

reflect Respondent Rite Aid's computer generated inventory records. Respondent Rite Aid revised the audit but the audit still incorrectly included two previous DEA 106 forms. After discussing the audit with Board Inspector ED, Respondent Rite Aid amended the audit to reflect the following:

Board Audit 5/01/2017 to 09/15/2020										
Drug	Unit	Beginning Inventory	Acquisition WLS	ACQ Total	Disposition	Return	Previous DEA 106	Ending Inventory 9/15/20	DISPO Total	Variance
Zolpidem Tartrate 10MG	Table	1659	52300	53959	52812	-		624	53436	523
Tramadol HCL 50 MG	Table	1920	84200	86120	84985	5		1044	86034	86
Promethazine-Codeine Syrup	ML	3784	82775	86559	73144	-	713	710	74567	11992
Alprazolam 2 MG	Table	506	16100	16060	16142	-		255	16397	209

34. Board Inspector ED received records of purchases, credits, and dispositions for the period May 1, 2017, through September 15, 2020, for the medications identified as lost or stolen by Respondent Rite Aid. Based on the evidence provided, Board Inspector ED performed an audit on behalf of the Board and determined as follows:

Board Audit 5/01/2017 to 09/15/2020									
Drug	Unit	Beginning Inventory	Acquisition WLS	ACQ Total	Disposition	Return	Ending Inventory 9/15/20	DISPO Total	Variance
Zolpidem Tartrate 10MG	Table	1659	52300	53959	52812	-	624	53436	523
Tramadol HCL 50 MG	Table	1920	84200	86120	84985	5	1044	86034	86
Promethazine-Codeine Syrup	ML	3784	82775	86559	73144	-	710	73854	12705
Alprazolam 2 MG	Table	506	16100	16060	16142	-	255	16397	209

35. The Board's audit for the period between May 1, 2017, and September 15, 2020, revealed a positive Variance for the following drugs.

a.) 523 tablets of zolpidem 10mg;

b.) 86 tablets of tramadol 50mg;

c.) 12,705 milliliters of promethazine and codeine syrup; and

d.) 209 tablets of alprazolam 2 mg.

FIRST CAUSE FOR DISCIPLINE-RESPONDENT KIM

(Unprofessional Conduct-Moral Turpitude, Dishonesty, Fraud, and Deceit)

36. Respondent Rosemary Hyun Ju Kim is subject to disciplinary action under Code section 4301 subdivision (f), in that she engaged in unprofessional conduct involving moral turpitude, dishonesty, fraud, and deceit when she diverted seven bottles of promethazine and codeine syrup with the intent to sell them, as more fully set forth in paragraphs 23 through 33 which are incorporated by reference as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE-RESPONDENT KIM

(Unprofessional Conduct- Unlawful Possession of Controlled Substances)

37. Respondent Rosemary Hyun Ju Kim is subject to disciplinary action under Code section 4060 and Health and Safety Code section 11173, subdivision (a), by and through Code section 4301, subdivisions (j) and (o) for unprofessional conduct, in that while employed and on duty as a pharmacy technician at Respondent Rite Aid, Respondent possessed a controlled substance (codeine) without authorization or a valid prescription, as more particularly set forth in paragraphs 23 through 33 which are incorporated by reference as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE-RESPONDENT KIM

(Unprofessional Conduct: Violating Laws and Regulations Governing Pharmacy)

38. Respondent Rosemary Hyun Ju Kim is subject to disciplinary action under Code section 4301 subdivision (o), for unprofessional conduct, in that while employed and on duty as a pharmacy technician at Respondent Rite Aid, Respondent violated or attempted to violate, directly or indirectly, laws governing pharmacy, as more particularly set forth above in paragraphs 23 through 33 which are incorporated by reference as if fully set forth herein.

1 **FOURTH CAUSE FOR DISCIPLINE-RESPONDENT KIM**

2 **(Unlawful Furnishing of Controlled Substances)**

3 39. Respondent Rosemary Hyun Ju Kim is subject to discipline under Code section
4 4059, subdivision (a), and Health and Safety Code section 11171, by and through Code section
5 4301, subdivisions (j) and (o) for unprofessional conduct, in that while employed as a pharmacy
6 technician at Respondent Rite Aid, Respondent furnished a controlled substance and dangerous
7 drug without a valid prescription, as more particularly set forth above in paragraphs 23 through
8 33 which are incorporated by reference as if fully set forth herein.

9 **FIFTH CAUSE FOR DISCIPLINE-RESPONDENT CHE QUACH**

10 **(Operational Standards and Security)**

11 40. Respondent Tracy Dieuthao Che-Quach is subject to disciplinary action under
12 Code section 4081 subdivision (a) and Code section 4332, in conjunction with California Code of
13 Regulations, title 16 section 1714 subdivision (b) in that while employed as the Pharmacist-in-
14 Charge at Respondent Rite Aid she failed to maintain a current inventory and records of
15 acquisition and disposition of dangerous drugs and failed to maintain dangerous drugs in a safe
16 and secure manner as more particularly set forth above in paragraphs 23 through 33 above which
17 are incorporated by reference as if fully set forth herein.

18 **SIXTH CAUSE FOR DISCIPLINE-RESPONDENT RITE AID**

19 **(Operational Standards and Security)**

20 41. Respondent Rite Aid is subject to disciplinary action under Code section 4081,
21 subdivision (a) and Code section 4332, in conjunction with California Code of Regulations, title
22 16 section 1714 subdivision (b) in that an audit of Respondent Rite Aid revealed losses of
23 dangerous drugs. Respondent Rite Aid failed to maintain a current inventory and records of
24 acquisition and disposition of dangerous drugs and failed to maintain dangerous drugs in a safe
25 and secure manner as more particularly set forth in paragraphs 23 through 33 above which are
26 incorporated by reference as if fully set forth herein.

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28 ///

OTHER MATTERS

1. Pursuant to Section 4307, if Pharmacy Permit Number PHY 42426 issued to Rite Aid Corporation dba Rite Aid 5770 is suspended, revoked or placed on probation, Respondent Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

2. Pursuant to Section 4307, if Pharmacy Permit Number PHY 42426 issued to Rite Aid Corporation., dba Rite Aid 5770 is suspended, revoked or placed on probation, and Respondent Che-Quach, while acting as the manager, administrator, owner, member, officer, director, associate, or partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit Number PHY 42426 was revoked, suspended, or placed on probation, Respondent Che-Quach shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

3. Pursuant to Section 4307, if Pharmacist License Number RPH 42661 issued to Tracy Dieuthao Che-Quach is suspended or revoked, Respondent Che-Quach shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 42426, issued to Rite Aid Corporation, dba Rite Aid 5770;

2. Revoking or suspending Pharmacy Technician Registration Number TCH 75505, issued to Rosemary Hyun Ju Kim;

3. Revoking or suspending Pharmacist License Number RPH 42661, issued to Tracy Dieuthao Che-Quach;

4. Ordering Respondent Rite Aid, Respondent Rosemary Hyun Ju Kim and Respondent Tracy Dieuthao Che-Quach to pay the Board of Pharmacy the reasonable costs of the

1 investigation and enforcement of this case, pursuant to Business and Professions Code section
2 125.3; and,

3 5. Taking such other and further action as deemed necessary and proper.
4
5

6 DATED: 4/13/2021
7 _____

Signature on File

8 ANNE SODERGREN
9 Executive Officer
10 Board of Pharmacy
11 Department of Consumer Affairs
12 State of California
13 *Complainant*

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