

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

In the Matter of the Accusation Against:

NHA LE TUAN TRUONG, Respondent

Pharmacist License No. RPH 66285

Agency Case No. 7361

OAH No. 2023030978

DECISION AFTER REJECTION

Marion J. Vomhof, Administrative Law Judge (ALJ), of the Office of Administrative Hearings (OAH), an independent adjudicative agency of the State of California, heard this matter by videoconference on July 20, 2023.

Craig S. Menchin, Deputy Attorney General, appeared and represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs, State of California.

John Bishop, Attorney at Law, represented respondent Nha Le Tuan Truong.

Oral and documentary evidence was received, the record closed, and the matter was submitted for decision on July 20, 2023.

The ALJ issued a Proposed Decision on August 21, 2023. On November 14, 2023, pursuant to section 11517 of the Government Code, the board issued an order rejecting the Proposed Decision. The board ordered and subsequently received the transcript and administrative record of the hearing, and on January 10, 2024, issued an order setting January 31, 2024, as the date for the submission of written argument. No new evidence was permitted. Both parties timely filed written argument.

The board, having reviewed and considered the entire record, including the transcript and administrative record and written argument submitted by the parties, now issues this Decision After Rejection, consistent with the board's disciplinary guidelines.

FACTUAL FINDINGS

Background Information

1. On October 14, 2011, the board issued Pharmacist License No. RPH 66285 to respondent. This license will expire on September 30, 2025.
2. On January 25, 2023, complainant signed and filed an accusation against respondent. Complainant alleges two causes to discipline respondent's license: (1) conviction of crimes that are substantially related to the qualifications, functions, and duties of a licensed pharmacist; and (2) unprofessional conduct because respondent engaged in acts of moral turpitude. Complainant seeks revocation or suspension of respondent's license and payment of the reasonable costs of investigation and enforcement.
3. Respondent timely filed a Notice of Defense. The matter was set for an

evidentiary hearing, and the July 20, 2023 hearing followed.

Complainant's Evidence

CRIMINAL CONVICTION

4. On or about November 22, 2021,¹ in a criminal proceeding entitled *United States of America v. Nha Le Tuan Truong et al.*, United States District Court, Southern District of California (U.S. District Court), Case Number 8:18-cr-00119-RGK-5, respondent pled guilty and was convicted of violating Title 18 United States Code section 371, conspiracy to commit money laundering. Respondent was sentenced to twelve months in prison and ordered to pay a court assessment and restitution.

CRIMINAL INDICTMENT AND SUPERSEDING CRIMINAL INFORMATION

5. The following information was obtained from the June 21, 2018, indictment and First Superseding Criminal Information (Information), filed on April 4, 2019:

6. TC Medical Pharmacy (TCMP) was a pharmacy located in Corona, California, owned and controlled by Thu Van Le, aka Tony Le. Respondent controlled and operated the Nha Truong Foundation ("NTF"), organized pursuant to Title 26, United States Code, Section 501(c)(3), to receive and disburse funds for nonprofit, charitable purposes. Respondent had sole control over NTF's general operating account held at Bank of America.

¹ The accusation erroneously stated that respondent was convicted on November 22, 2022.

7. TRICARE is a federal health benefit program as defined by Title 18 United States Code section 24, subdivision (b), and a federal health care program, as defined by Title 42 United States Code section 1302a-7b (f) (i), that provides health care benefits, items, and services to Department of Defense (DOD) beneficiaries world-wide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors.

8. Beginning as early as March 2015, and continuing to December 2016, respondent, together with others, executed a wide-ranging scheme to defraud and obtain money from TRICARE and the Amtrak Union Benefits Plan (AMPLAN), in connection with the delivery of and payment for health care benefits.

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9. In order to carry out the scheme, respondent committed the following conduct as alleged in the indictment:

a. Respondent and/or co-conspirators caused compounded medications² prescription forms to be prepared and distributed to marketers that identified multiple compounded medications formulations, which were included on the forms and selected by the marketers because they provided the maximum possible TRICARE and

² In general, "compounding" is a practice by which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combines, mixes or alters ingredients of a drug or multiple drugs to create a drug tailored to the needs of an individual patient. Compounded drugs are not approved by the U.S. Food and Drug Administration (FDA), that is, the FDA does not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs. The board regulates the practice of compounding in the State of California.

Compounded drugs could be prescribed by a physician when an FDA-approved drug did not meet the health needs of a particular patient. For example, if a patient was allergic to a specific ingredient in an FDA-approved medication, such as a dye or a preservative, a compounded drug could be prepared excluding the substance that triggers the allergic reaction. Compounded drugs could also be prescribed when a patient cannot consume a medication by traditional means, such as an elderly patient or a child who could not swallow an FDA-approved pill and needed the drug in a liquid form that was not otherwise available.

AMPLAN reimbursements rather than based on individual patient needs and medical necessity.

b. After obtaining beneficiaries' personal and insurance information, marketers used the form provided by respondent and/or co-conspirators to designate prescriptions to beneficiaries that such marketers selected as appropriate, despite having no health care training, and which would maximize TRICARE reimbursements and, in turn, the amount of kickbacks they would receive under their agreement with TCMP. Marketers then caused the authorized prescriptions to be sent to TCMP and Mars Hill Pharmacy (MPH) for fulfillment, both pharmacies that were operated by respondent and/or co-conspirators.

c. Respondent, knowing the reimbursements that TCMP received from TRICARE were the proceeds of unlawful activity, agreed with co-conspirator Mr. Le to allow the NTF to be used to hold those funds, thereby concealing the sources and location of those funds.

d. Respondent would transfer the fraudulently obtained reimbursements back to Tony Le at such time as Mr. Le deemed appropriate.

10. Throughout the course of the scheme, respondent's nonprofit, NTF, received and later retransmitted \$1,150,000 to co-conspirators.

TESTIMONY OF ELHAM DELUNE, PHARM.D.

11. The following is a summary of the testimony of Elham Delune: She has been employed as an inspector with the board since 2016 and became a licensed pharmacist in 2010. Her duties as an inspector include investigating complaints alleging violations of pharmacy law, inspecting pharmacies and wholesalers,

conducting interviews, and working alongside other government agencies on investigations. Prior to working with the board, she was practicing as a staff pharmacist and a pharmacist in charge (PIC) at several pharmacies.

Dr. Delune did not conduct an investigation in this case. She reviewed documents and the indictment. She assessed that the scheme in which respondent participated involved marketers cold-calling patients who had been prescribed a medication by their doctor. An individual contacted by a marketer may give their consent to the compounding medication because they are under the mistaken belief that the marketer is a doctor, or that a doctor recommended an alternate medication. If a patient takes medications that they did not need, it may cause serious harm to their health. When claims are submitted for medications that are not needed, a patient may not be able to receive medications they do need because they have reached their insurance limit.

Respondent's conduct is concerning because he has been licensed by the board as a pharmacist. Pharmacists are trusted by their patients to be ethical, honest, to use good judgment, and to follow laws and regulations of the board, and local, state, and federal governments. A pharmacist has access to personal and financial information of patients because of the trust built into their license. Respondent's conduct is concerning because he knowingly placed funds obtained from this scheme into the account of a nonprofit organization for the purpose of money laundering.

On cross-examination, Dr. Delune stated that she reviewed character reference letters from respondent's friends and colleagues. While these letters speak to respondent's work ethic and being a good friend, they do not provide assurances to the board that respondent will not repeat his criminal activity.

Respondent's Evidence

TESTIMONY AND LETTER OF REFERENCE OF QUAN LE, PHARM.D.

12. The following is a summary of the testimony and written letter of reference of Quan Le: He has held a Pharm.D. license for more than 16 years. He is a staff pharmacist and PIC at Medcare Medical Pharmacy (Medcare), an independent pharmacy.

Dr. Le met respondent four or five years ago when respondent was interning at the pharmacy of Dr. Le's friend. Dr. Le hired respondent as a staff pharmacist at Medcare, and respondent began working there on March 27, 2023. Respondent is currently on probation for a period of time. Prior to being hired, respondent told Dr. Le about his criminal conviction. Respondent told Dr. Le that he "followed the lead of others" and started to bill excessively, and because the funds received were "more than the scope of the practice," they "had to launder the money." Respondent said this was a bad decision, and "the worst time of my life." Respondent was "regretful" and Dr. Le "saw the remorse." Respondent's past conduct is concerning to Dr. Le because "patient care is our priority." He was willing to give respondent a second chance. Dr. Le "had a difficult life" before he became a pharmacist. He believes everyone makes bad decisions. He has given people second chances before. Since he hired respondent they have become friends.

Dr. Le observes respondent interacting with patients. Respondent is considerate with patients and ensures that they understand what medications they are taking and how to take them. He takes the time to speak with patients and listen to any concerns they may have. He has access to patients' medical records and their insurance information, and he accepts co-pays only. He has no access to patients' financial

information. Respondent works alone in the pharmacy most of the time. Dr. Le goes to the pharmacy once or twice per day. Dr. Le depends on respondent. He said, "[Respondent] has never given me reason to regret I hired him." If respondent's license is disciplined and he is subject to probation terms and conditions, Dr. Le "would be willing to hire him."

TESTIMONY OF RESPONDENT

13. On March 27, 2023, respondent was hired as a pharmacist at Medicare. His duties are to receive, process, verify, and dispense medications, and counsel patients. In this position, he has access to patients' medical and insurance information.

Respondent stated that he is guilty of all allegations asserted against him in the Information. He accepts responsibility for his actions. On November 22, 2021, he pled guilty and was convicted of conspiracy to money launder. He was sentenced to and served 12 months in federal prison. He was ordered to pay restitution of \$7,700,000. The federal government garnishes 10 percent of his wages each month toward payment of the restitution. Respondent has had no other convictions.

After receiving his pharmacist license in 2011, respondent initially worked for Mr. Le, a co-defendant in the criminal matter. In 2014 or 2015, Mr. Le asked him to open a pharmacy to do compounding. In the process, they started billing TRICARE and became involved in money laundering. Mr. Le agreed to pay kickbacks to marketers for the referral of medically unnecessary compounded medications. Respondent participated in this scheme. The scheme was dangerous because patients could potentially be harmed if they had an adverse reaction to an ingredient. Marketers are individuals who have a good relationship with the doctors or patients. The marketers

obtain prescriptions and bring them back to the pharmacy to be filled. The marketers were paid kickbacks for bringing this business to the pharmacy.

Mr. Le received the fraudulently obtained reimbursements, and he and respondent agreed that these reimbursements would be deposited into the account of NTF, a nonprofit foundation set up by respondent's father. Respondent gave Mr. Le the information about the NTF account. Respondent agreed that the fraudulently obtained reimbursements would go back to Mr. Le at a point when Mr. Le determined that the likelihood of anyone getting the money back had diminished. Respondent used this foundation to conceal the source of these funds. In hindsight, he feels terrible and ashamed. This was dishonest and not consistent with his values. He ruined the integrity of the foundation which was meant to do good for the community. Respondent stated that it is important that pharmacists be honest because the public places its trust in them. He no longer compounds medications.

Respondent first became aware of the investigation in 2016 or 2017 from Mr. Le. Respondent was contacted by law enforcement and he fully cooperated with them. He provided statements of his unlawful activity and of the unlawful activity of others.

At the hearing, Respondent testified that he is 41 years old; that he and his wife are expecting their first child; and that his wife is an esthetician but was not currently working due to her pregnancy. Respondent's wages are currently 100 percent of his family's income. His expenses include his home mortgage of \$2,900, car payment of \$1,100, utilities, gas, and groceries. He also pays restitution of \$640 each month. All bills are paid from his wages. He has no money left over.

He understands why the board is concerned with his continuing as a licensed pharmacist based on his criminal conduct. He would abide by terms and conditions if required to do so by the board.

14. On cross-examination, respondent agreed that it is important that pharmacists are honest, use good judgment, and put their patients first. Respondent worked as a pharmacist for about four years prior to participating in this scheme.

Respondent met Mr. Le through a mutual friend while respondent was interning at another pharmacy. Mr. Le posted that he was looking for a pharmacist. Respondent's boss referred him to Mr. Le. Respondent agreed to do what Mr. Le asked because Mr. Le "was like a mentor or brother to me. I put the relationship between myself and [Tony] and the business first, and I should not have." Respondent agreed to use his father's nonprofit charity to hide the source of the funds because at the time he "was not thinking of the harm to the real causes of the charity." It was a bad judgment call.

Respondent and Mr. Le hired marketers and paid them in the form of kickbacks to find patients, generate prescriptions, and bring the prescriptions to respondent's pharmacy. Respondent's pharmacy filled the prescriptions and obtained the reimbursements from TRICARE. The kickbacks paid to the marketers were a percentage of the amount that Mr. Le and respondent billed TRICARE. The compounding scheme accounted for 80 percent of his pharmacy's business; the balance of his business came from workers compensation.

Respondent stated that when filling the prescriptions, "we" called the patient to make sure the patient wanted the medication and explained how to use the

medication. These were not medically necessary prescriptions. They did not involve a patient speaking with their doctor.

Respondent was asked what he "got out of this," and he responded that this was "a partnership" because Mr. Le helped him to open a pharmacy. It was mutually beneficial in a financial way. It was Mr. Le's idea to use TRICARE for reimbursements because "that was how [Mr. Le] brought in the business." Respondent took the reimbursement money from Mr. Lee and put it in the nonprofit account. He later returned the money to Mr. Le at Mr. Le's request. In addition, Mr. Le paid respondent \$2 million directly from the fraudulent reimbursements. This was money respondent did not have to give back.

Respondent was asked if, when he initially learned of the scheme, he had any concerns about potential harm to patients. He responded, "At that time, no." He thought it was "okay" because "it was just topical creams." He saw the potential gain and did not think of the consequences. This was pure greed on his part.

Respondent was asked why the board should trust him going forward. He stated: "This was a bad decision. I was greedy and did not think of the effect on patients if something went wrong. This was unacceptable." He does not dispute any of the allegations in the Information. When asked about his rehabilitation, respondent said he served his 12-month prison sentence. No additional rehabilitation was required by the court. He stated that he did not complete coursework in ethics, he used "self-reflection." He has tried to be the person he was raised to be, with morals and values. His wants to be a role model for his son. Between 2019 and 2020, prior to sentencing, he earned a master's degree in health administration.

CHARACTER REFERENCE LETTERS

15. Respondent provided the following character reference letters:

- Hien and David Le met respondent 22 years ago when they all attended the same college. They have observed him work between school and work to serve others. He volunteered at a local temple to help tutor children and inspired troubled children to change their attitudes and behavior. He has helped many first-generation Vietnamese parents and students on the path to a better education. Respondent "has been honest about his illegal actions and his commitment to being a better person to society." This was an error in judgment and an aberration.
- Jamie Slade is director of Supportive Care Service Foundation (SCS), a nonprofit organization that helps the elderly with end-of-life issues. Respondent volunteers at SCS and is "instrumental" in advancing its mission. Respondent testified that Mr. Slade is aware of his felony conviction involving money laundering, and Mr. Slade allowed respondent to continue to volunteer at SCS.
- Hao N. Thai, M.D., wrote that he and respondent met in college more than 20 years ago. He understands that respondent is "facing some problems with the law." Dr. Thai describes respondent as an honest man, a good friend, and a caring person who will help whoever needs help.
- Esther Nguyen, Pharm.D., is respondent's cousin. They grew up together in Vietnam. She describes him as "honest, reliable, and kind-hearted." A "crucial value" to respondent is serving others. She is aware that respondent made an "uncharacteristic mistake of healthcare fraud." Respondent has

"expressed his desire to continue to help others and make meaningful contributions to society." Practicing pharmacy is a passion for respondent.

- Michelle Pham, Pharm.D., has known respondent for nine years and wrote that she is "a colleague turn [sic] friend." She described respondent as "respected and responsible," with a "good moral character and strong family values." Respondent confided in her about his illegal actions and "showed great remorse." She asked that he be given a second chance. The author also described respondent as "trusting and gullible" and wrote that this has led to bad business decisions. Respondent testified that this is Ms. Pham's opinion, but he takes responsibility for his actions.
- Glen Bean, a friend of respondent, described him as "well-loved and respected." He is aware that respondent committed a crime but he is not aware of any details. It is "out-of-character" for respondent "to do anything that could have [sic] ill effect" on anyone.

Costs of Prosecution

16. The Deputy Attorney General who prosecuted the case executed a declaration regarding the costs of prosecution. Attached to his declaration is a document entitled "Matter Time Activity by Professional Type," which identified the tasks performed, the time spent on each task, and the hourly rate. The ALJ determined that complainant established that the reasonable cost of prosecution was \$5,045.

LEGAL CONCLUSIONS

Purpose of Disciplinary Proceedings

1. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable, or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 4001.1.)

Burden and Standard of Proof

4. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.)

5. The standard of proof in an administrative proceeding seeking to suspend or revoke a license that requires substantial education, training, and testing, such as the pharmacist license at issue here, is "clear and convincing evidence" to a reasonable certainty. (*Ettinger, supra*, 135 Cal.App.3d at pp. 855-856.)

6. "Clear and convincing evidence" means evidence that is "'so clear as to leave no substantial doubt'; 'sufficiently strong to command the unhesitating assent of

every reasonable mind.' [Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

7. In a disciplinary proceeding, the burden of proof is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

Applicable Law

8. Business and Professions Code section 482, subdivision (a), requires the board to develop criteria to evaluate the rehabilitation of a licensee when considering suspension or revocation of a license under section 490. Subdivision (b) requires the board to consider whether a licensee has made a showing of rehabilitation if the licensee has completed the criminal sentence at issue without a violation.

9. Business and Professions Code section 490 states:

(a) . . . a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or

duties of the business or profession for which the licensee's license was issued.

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

10. Business and Professions Code section 493 states:

(a) . . . in a proceeding conducted by a board within the department pursuant to law to . . . suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or

duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

11. Business and Professions Code section 4301 authorizes the board to take disciplinary action against a licensee who is guilty of unprofessional conduct. Subdivision (f) defines unprofessional conduct to include acts of moral turpitude, dishonesty, fraud, and deceit. Subdivision (l) defines unprofessional conduct to include a conviction of a crime substantially related to the qualifications, functions, and duties of the licensed profession.

12. California Code of Regulations, title 16, section 1770, states:

(a) For the purpose of denial, suspension, or revocation of a personal or facility license . . . a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, . . . if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to

perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination . . . the board will consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation . . .

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

(1) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, governing the practice of pharmacy.

[¶] . . . [¶]

(3) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, relating to government provided or government supported healthcare.

(4) Involve dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.

[¶] . . . [¶]

13. California Code of Regulations, title 16, section 1769, subdivision (c), states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

(1) Nature and gravity of the act(s) or offenses.

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offenses.

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

Cause Exists to Discipline Respondent's License

14. Complainant established by clear and convincing evidence that cause exists under Business and Professions Code sections 490 and 4301, subdivision (l), to impose discipline because respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacist, when on November 22, 2021, he was convicted of conspiracy to commit money laundering in violation of Title 18 United States Code section 371. Respondent used his pharmacist license issued by the board to participate in this unlawful scheme. Pharmacists are expected to be honest, trustworthy, and exercise good judgment. Respondent's conviction demonstrated a lack of good judgment and an inability to perform the functions of a pharmacist in a manner consistent with the public health, safety, or welfare.

15. Complainant established by clear and convincing evidence that cause exists under Business and Professions Code section 4301, subdivision (f), to impose discipline for unprofessional conduct because respondent engaged in acts of moral turpitude when he participated in this unlawful scheme. Pharmacists are expected to

be honest, trustworthy, and exercise good judgement. Respondent's conduct demonstrated a lack of good judgment and an inability to perform the functions of a pharmacist in a manner consistent with the public health, safety, or welfare.

The Board's Disciplinary Guidelines

16. With causes for discipline having been found, the degree of discipline to imposed must now be determined. The board has set forth Disciplinary Guidelines (Rev. 2/2017), incorporated by reference in its regulations (Cal. Code Regs., tit. 16, § 1760), to assist in determining the appropriate level of discipline. The guidelines provide in part:

The California Pharmacy Law identifies offenses for which the board may take disciplinary action against the license. Included among grounds for discipline are violations of the Pharmacy Law itself, violations of regulations promulgated by the board, and violations of other state or federal statutes or regulations.

For those licenses issued to pharmacists, the board has identified four categories of violations and their associated recommended minimum and maximum penalties. These categories are arranged in ascending order from the least serious (Category I) to the most serious (Category IV).

Category II provides recommended discipline for violation(s) with serious potential for harm, as well as for violations involving disregard for public safety or for the laws or regulations pertaining to pharmacy, and violations that reflect on ethics and criminal convictions not involving alcohol, dangerous drugs and/or dangerous devices, or controlled substances.

Category II recommended maximum discipline is revocation; the minimum discipline is revocation stayed, with three years' probation and all standard terms and conditions.

17. The following factors were considered in determining whether the maximum or minimum penalty is imposed and the considerations are as follows:

1. actual or potential harm to the public – Respondent's conduct resulted in a financial loss to TRICARE for which respondent is paying the court-ordered restitution.

2. actual or potential harm to any consumer – Respondent's conduct posed potential harm to consumers who received the compounded medications.

3. prior disciplinary record, including level of compliance with disciplinary order(s) – Respondent has no prior disciplinary record.

4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s) – Respondent received no prior warnings.

5. number and/or variety of current violations – The unlawful scheme occurred over a period of approximately two years but respondent was convicted of one violation.

6. nature and severity of the act(s), offense(s) or crime(s) under consideration – Respondent's acts posed a threat to the health, safety and well-being of customers who received the unnecessary compounded medications. There was no evidence that any customers were in fact harmed by taking these medications.

7. aggravating evidence – Respondent completed his prison sentence less than one year ago; respondent's conduct occurred less than four years after he obtained his pharmacy license.

8. mitigating evidence – Respondent fully cooperated with authorities in their investigation; he fully complied with his prison sentence.

9. rehabilitation evidence – Respondent's rehabilitation evidence is discussed in paragraph 21 below.

10. compliance with terms of any criminal sentence, parole, or probation – Respondent served his criminal sentence of 12 months.

11. overall criminal record – Respondent has no other criminal record.

12. time passed since the act(s) or offense(s) – The acts occurred between March 2015 and December 2016 or between six to eight years ago.

13. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct – Respondent's conduct was intentional and he knowingly participated in the scheme.

14. financial benefit to the respondent from the misconduct – Respondent received \$2 million from the reimbursements from Mr. Le.

Rehabilitation

18. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and

regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

19. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

20. The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

21. Respondent admitted that he was guilty of all allegations made against him in the Information. He made no excuses for his conduct. On numerous occasions at hearing, he expressed remorse for his actions, and his remorse was corroborated by statements of several authors of character letters that respondent had expressed his remorse to them. Respondent was honest with several individuals about his actions and his conviction although some authors of character letters and Dr. Tran were not fully aware of the details of what had occurred. Respondent obtained his master's degree in health administration in 2020 to 2021, prior to his conviction. Respondent provided evidence that he volunteers for a foundation assisting the elderly.

Evaluation

22. Respondent's criminal acts were serious. His conduct posed a threat to the health and well-being of numerous individuals and undermined the integrity of the system on which public confidence in the pharmaceutical profession is founded. Respondent's conduct arose directly out of his licensure. The legal, ethical, and moral

pressures of a daily practice as a pharmacist come in many forms. Besides raw greed and self-aggrandizement, the pressures may include the sincere but misguided desire to please.

Respondent admitted to each of the allegations against him in the Information. He acknowledged that it is important and expected by the public that a pharmacist is trustworthy, honest, uses good judgment, and puts patients first. He testified that by his actions he failed to meet these expectations.

He expressed remorse for his conduct. His unlawful conduct occurred more than six years ago. He completed his criminal sentence and is not on probation. His numerous expressions of remorse for his actions were sincere. His testimony was credible and forthright. Based on the totality of the evidence, public protection does not require that respondent's license be revoked. The stayed revocation and three years' probation will adequately protect the public because respondent's conduct and practice of pharmacy will be supervised by a pharmacist approved by the board and will be monitored by the board.

Costs of Enforcement

23. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate 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." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Bus. & Prof. Code, § 125.3, subd. (c).) The ALJ determined that reasonable costs in this matter

were \$5,045.

24. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

25. When the ALJ considered the *Zuckerman* factors, they determined that the scope of the investigation was appropriate to the allegations and that the deputy attorney general who tried the matter was very well prepared. The ALJ further determined that respondent was successful in getting the charges reduced; respondent appeared to assert a good faith belief in the merits of his position; and respondent raised a colorable challenge to the proposed discipline. While respondent testified that he is financially unable to pay costs, the ALJ found that his testimony was not persuasive. Accordingly, the ALJ determined that the costs of \$5,045 were deemed reasonable, and that respondent shall pay this amount to the board per the schedule determined by the board.

ORDER

Pharmacist License Number RPH 66285 issued to respondent Nha Le Tuan Truong is revoked. However, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

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

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

2. Report to the Board

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

conditions of probation.

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of this decision in case number 7361 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known.

Respondent shall also include the reason(s) for leaving the prior employment.

Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring.

Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or

owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7361 and the terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving in the role(s) described in (a), (b), or (c) during the period of probation, respondent shall cause the persons taking over the roles to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case 7361 and the terms and conditions imposed thereby.

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

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 7361 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

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

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

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

8. Restrictions on Supervision and Oversight of Licensed Facilities

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible 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 shall pay to the board its costs of investigation and prosecution in the amount of \$5,045. Respondent 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 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 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'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 cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender

of the license, respondent shall no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

13. Practice Requirement – Extension of Probation

Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level.

Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent 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'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 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 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 violates probation in any respect, the board, after giving respondent 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 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. Supervised Practice

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist licensed by and not on probation with the board, to serve as respondent's practice supervisor. As part of the documentation submitted, respondent 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 7361, 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 may practice only under the required level of supervision by an approved practice supervisor. If, for any reason, including change of employment, respondent is no longer supervised at the required level by an approved practice supervisor, within ten (10) days of this change in supervision respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist licensed by and not on probation with the board, to serve as respondent's replacement practice supervisor. As part of the documentation submitted, respondent 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 7361 and is familiar with the terms and conditions imposed thereby, including the level of supervision required.

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

- Failure to nominate an initial practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within thirty (30) days;
- Failure to nominate a replacement practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within ten (10) days;
- Practicing in the absence of an approved practice supervisor beyond the initial or replacement nomination period; or
- Any failure to adhere to the required level of supervision.

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

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

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

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

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

16. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall provide proof of enrollment upon request. Within five (5) days of completion, respondent 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. No Ownership or Management of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, nor serve as a

manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.


18. Completion of Probation

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

This Decision shall become effective at 5:00 p.m. on March 29, 2024.

It is so ORDERED on February 28, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
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:

NHA LE TUAN TRUONG, Respondent

Pharmacist License No. RPH 66285

Agency Case No. 7361

OAH No. 2023030978

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The transcripts (administrative record) of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting Proposed Decision dated November 14, 2023. The California State Board of Pharmacy will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov on or before **January 31, 2024**.

It is so ORDERED on January 10, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

NHA LE TUAN TRUONG, Respondent

Pharmacist License No. RPH 66285

Agency Case No. 7361

OAH No. 2023030978

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on November 14, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

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:

NHA LE TUAN TRUONG, Respondent

Pharmacist License No. RPH 66285

Agency Case No. 7361

OAH No. 2023030978

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 20, 2023.

Craig S. Menchin, Deputy Attorney General, appeared and represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs, State of California.

John Bishop, Attorney at Law, represented respondent Nha Le Tuan Truong.

Oral and documentary evidence was received, the record closed and the matter was submitted for decision on July 20, 2022.

FACTUAL FINDINGS

Background Information

1. On October 14, 2011, the board issued Pharmacist License No. RPH 66285 to respondent. This license will expire on September 30, 2023.
2. On January 25, 2023, complainant signed and filed an accusation against respondent. Complainant alleges two causes to discipline respondent's license: (1) conviction of crimes that are substantially related to the qualifications, functions, and duties of a licensed pharmacist; and (2) for unprofessional conduct because respondent engaged in acts of moral turpitude. Complainant seeks revocation or suspension of respondent's license and payment of the reasonable costs of investigation and enforcement.
3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing, and this hearing followed.

Complainant's Evidence

CRIMINAL CONVICTION

4. On or about November 22, 2021,¹ in a criminal proceeding entitled *United States of America v. Nha Le Tuan Truong et al.*, United States District Court, Southern District of California (U.S. District Court), Case Number 8:18-cr-00119-RGK-5,

¹ The accusation erroneously stated that respondent was convicted on November 22, 2022.

respondent pled guilty and was convicted of violating Title 18 United States Code section 371, conspiracy to commit money laundering. Respondent was sentenced to twelve months in prison and ordered to pay a court assessment and restitution.

CRIMINAL INDICTMENT AND SUPERSEDING CRIMINAL INFORMATION

5. The following information was obtained from the June 21, 2018, indictment and First Superseding Criminal Information (Information), filed on April 4, 2019:

6. TC Medical Pharmacy (TCMP) was a pharmacy located in Corona, California, owned and controlled by Thu Van Le, aka Tony Le. Respondent controlled and operated the Nha Truong Foundation ("NTF"), organized pursuant to Title 26, United States Code, Section 501(c)(3), to receive and disburse funds for nonprofit, charitable purposes. Respondent had sole control over NTF's general operating account held at Bank of America.

7. TRICARE is a federal health benefit program as defined by Title 18 United States Code section 24, subdivision (b), and a federal health care program, as defined by Title 42 United States Code section 1302a-7b (f) (i), that provides health care benefits, items, and services to Department of Defense (DOD) beneficiaries world-wide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors.

8. Beginning as early as March 2015, and continuing to December 2016, respondent, together with others, executed a wide-ranging scheme to defraud and obtain money from TRICARE and the Amtrak Union Benefits Plan (AMPLAN), in connection with the delivery of and payment for health care benefits.

9. In order to carry out the scheme, respondent committed the following conduct as alleged in the indictment:

a. Respondent and/or co-conspirators caused compounded medications² prescription forms to be prepared and distributed to marketers that identified multiple compounded medications formulations, which were included on the forms and selected by the marketers because they provided the maximum possible TRICARE and

² In general, "compounding" was a practice by which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combined, mixed or altered ingredients of a drug or multiple drugs to create a drug tailored to the needs of an individual patient. Compounded drugs were not approved by the Food and Drug Administration (FDA), that is, the FDA did not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs. The board regulates the practice of compounding in the State of California.

Compounded drugs could be prescribed by a physician when an FDA-approved drug did not meet the health needs of a particular patient. For example, if a patient was allergic to a specific ingredient in an FDA-approved medication, such as a dye or a preservative, a compounded drug could be prepared excluding the substance that triggers the allergic reaction. Compounded drugs could also be prescribed when a patient cannot consume a medication by traditional means, such as an elderly patient or a child who could not swallow an FDA-approved pill and needed the drug in a liquid form that was not otherwise available.

AMPLAN reimbursements rather than based on individual patient needs and medical necessity.

b. After obtaining beneficiaries' personal and insurance information, marketers used the form provided by respondent and/or co-conspirators to designate prescriptions to beneficiaries that such marketers selected as appropriate, despite having no health care training, and which would maximize TRICARE reimbursements and, in turn, the amount of kickbacks they would receive under their agreement with TCMP. Marketers then caused the authorized prescriptions to be sent to TCMP and Mars Hill Pharmacy (MPH) for fulfillment, both pharmacies that were operated by respondent and/or co-conspirators.

c. Respondent, knowing the reimbursements that TCMP received from TRICARE were the proceeds of unlawful activity, agreed with co-conspirator Mr. Le to allow the NTF to be used to hold those funds, thereby concealing the sources and location of those funds.

d. Respondent would transfer the fraudulently obtained reimbursements back to Tony Le at such time as Mr. Le deemed appropriate.

10. Throughout the course of the scheme, respondent's nonprofit, NTF, received and later retransmitted \$1,150,000 to co-conspirators.

TESTIMONY OF ELHAM DELUNE, PHARM.D.

11. The following is a summary of the testimony of Elham Delune: She has been employed as an inspector with the board since 2016 and became a licensed pharmacist in 2010. Her duties as an inspector include investigating complaints alleging violations of pharmacy law, inspecting pharmacies and wholesalers,

conducting interviews, and working alongside other government agencies on investigations. Prior to working with the board, she was practicing as a staff pharmacist and a pharmacist in charge (PIC) at several pharmacies.

Dr. Delune did not conduct an investigation in this case. She reviewed documents and the indictment. She assessed that the scheme in which respondent participated involved marketers cold-calling patients who had been prescribed a medication by their doctor. An individual contacted by a marketer may give their consent to the compounding medication because they are under the mistaken belief that the marketer is a doctor, or that a doctor recommended an alternate medication. If a patient takes medications that they did not need, it may cause serious harm to their health. When claims are submitted for medications that are not needed, a patient may not be able to receive medications they do need because they have reached their insurance limit.

Respondent's conduct is concerning because he has been licensed by the board as a pharmacist. Pharmacists are trusted by their patients to be ethical, honest, to use good judgment, and to follow laws and regulations of the board, and local, state, and federal governments. A pharmacist has access to personal and financial information of patients because of the trust built into their license. Respondent's conduct is concerning because he knowingly placed funds obtained from this scheme into the account of a nonprofit organization for the purpose of money laundering.

On cross-examination, Dr. Delune stated that she reviewed character reference letters from respondent's friends and colleagues. While these letters speak to respondent's work ethic and being a good friend, they do not provide assurances to the board that respondent will not repeat his criminal activity.

Respondent's Evidence

TESTIMONY AND LETTER OF REFERENCE OF QUAN LE, PHARM.D.

12. The following is a summary of the testimony and written letter of reference of Quan Le: He has held a Pharm.D. license for more than 16 years. He is a staff pharmacist and PIC at Medcare Medical Pharmacy (Medcare), an independent pharmacy.

Dr. Le met respondent four or five years ago when respondent was interning at the pharmacy of Dr. Le's friend. Dr. Le hired respondent as a staff pharmacist at Medcare, and respondent began working there on March 27, 2023. Respondent is currently on probation for a period of time. Prior to being hired, respondent told Dr. Le about his criminal conviction. Respondent told Dr. Le that he "followed the lead of others" and started to bill excessively, and because the funds received were "more than the scope of the practice," they "had to launder the money." Respondent said this was a bad decision, and "the worst time of my life." Respondent was "regretful" and Dr. Le "saw the remorse." Respondent's past conduct is concerning to Dr. Le because "patient care is our priority." He was willing to give respondent a second chance. Dr. Le "had a difficult life" before he became a pharmacist. He believes everyone makes bad decisions. He has given people second chances before. Since he hired respondent they have become friends.

Dr. Le observes respondent interacting with patients. Respondent is considerate with patients and ensures that they understand what medications they are taking and how to take them. He takes the time to speak with patients and listen to any concerns they may have. He has access to patients' medical records and their insurance information, and he accepts co-pays only. He has no access to patients' financial

information. Respondent works alone in the pharmacy most of the time. Dr. Le goes to the pharmacy once or twice per day. Dr. Le depends on respondent. He said, "[Respondent] has never given me reason to regret I hired him." If respondent's license is disciplined and he is subject to probation terms and conditions, Dr. Le "would be willing to hire him."

TESTIMONY OF RESPONDENT

13. On March 27, 2023, respondent was hired as a pharmacist at Medicare. His duties are to receive, process, verify, and dispense medications, and counsel patients. In this position, he has access to patients' medical and insurance information.

Respondent stated that he is guilty of all allegations asserted against him in the Information. He accepts responsibility for his actions. On November 22, 2022, he pled guilty and was convicted of conspiracy to money launder. He was sentenced to and served 12 months in federal prison. He was ordered to pay restitution of \$7,700,000. The federal government garnishes 10 percent of his wages each month toward payment of the restitution. Respondent has had no other convictions.

After receiving his pharmacist license in 2011, respondent initially worked for Mr. Le, a co-defendant in the criminal matter. In 2014 or 2015, Mr. Le asked him to open a pharmacy to do compounding. In the process, they started billing TRICARE and became involved in money laundering. Mr. Le agreed to pay kickbacks to marketers for the referral of medically unnecessary compounded medications. Respondent participated in this scheme. The scheme was dangerous because patients could potentially be harmed if they had an adverse reaction to an ingredient. Marketers are individuals who have a good relationship with the doctors or patients. The marketers

obtain prescriptions and bring them back to the pharmacy to be filled. The marketers were paid kickbacks for bringing this business to the pharmacy.

Mr. Le received the fraudulently obtained reimbursements, and he and respondent agreed that these reimbursements would be deposited into the account of NTF, a nonprofit foundation set up by respondent's father. Respondent gave Mr. Le the information about the NTF account. Respondent agreed that the fraudulently obtained reimbursements would go back to Mr. Le at a point when Mr. Le determined that the likelihood of anyone getting the money back had diminished. Respondent used this foundation to conceal the source of these funds. In hindsight, he feels terrible and ashamed. This was dishonest and not consistent with his values. He ruined the integrity of the foundation which was meant to do good for the community. Respondent stated that it is important that pharmacists be honest because the public places its trust in them. He no longer compounds medications.

Respondent first became aware of the investigation in 2016 or 2017 from Mr. Le. Respondent was contacted by law enforcement and he fully cooperated with them. He provided statements of his unlawful activity and of the unlawful activity of others.

Respondent is 41 years old. He and his wife are expecting their first child next month. His wife is an esthetician but she is not currently working due to her pregnancy. Respondent's wages are currently 100 percent of his family's income. His expenses include his home mortgage of \$2,900, car payment of \$1,100, utilities, gas, and groceries. He also pays restitution of \$640 each month. All bills are paid from his wages. He has no money left over.

He understands why the board is concerned with his continuing as a licensed pharmacist based on his criminal conduct. He would abide by terms and conditions if required to do so by the board.

14. On cross-examination, respondent agreed that it is important that pharmacists are honest, use good judgment, and put their patients first. Respondent worked as a pharmacist for about four years prior to participating in this scheme.

Respondent met Mr. Le through a mutual friend while respondent was interning at another pharmacy. Mr. Le posted that he was looking for a pharmacist. Respondent's boss referred him to Mr. Le. Respondent agreed to do what Mr. Le asked because Mr. Le "was like a mentor or brother to me. I put the relationship between myself and [Tony] and the business first, and I should not have." Respondent agreed to use his father's nonprofit charity to hide the source of the funds because at the time he "was not thinking of the harm to the real causes of the charity." It was a bad judgment call.

Respondent and Mr. Le hired marketers and paid them in the form of kickbacks to find patients, generate prescriptions, and bring the prescriptions to respondent's pharmacy. Respondent's pharmacy filled the prescriptions and obtained the reimbursements from TRICARE. The kickbacks paid to the marketers were a percentage of the amount that Mr. Le and respondent billed TRICARE. The compounding scheme accounted for 80 percent of his pharmacy's business; the balance of his business came from workers compensation.

Respondent stated that when filling the prescriptions, "we" called the patient to make sure the patient wanted the medication and explained how to use the

medication. These were not medically necessary prescriptions. They did not involve a patient speaking with their doctor.

Respondent was asked what he “got out of this,” and he responded that this was “a partnership” because Mr. Le helped him to open a pharmacy. It was mutually beneficial in a financial way. It was Mr. Le’s idea to use TRICARE for reimbursements because “that was how [Mr. Le] brought in the business.” Respondent took the reimbursement money from Mr. Lee and put it in the nonprofit account. He later returned the money to Mr. Le at Mr. Le’s request. In addition, Mr. Le paid respondent \$2 million directly from the fraudulent reimbursements. This was money respondent did not have to give back.

Respondent was asked if, when he initially learned of the scheme, he had any concerns about potential harm to patients. He responded, “At that time, no.” He thought it was “okay” because “it was just topical creams.” He saw the potential gain and did not think of the consequences. This was pure greed on his part.

Respondent was asked why the board should trust him going forward. He stated: “This was a bad decision. I was greedy and did not think of the effect on patients if something went wrong. This was unacceptable.” He does not dispute any of the allegations in the Information. When asked about his rehabilitation, respondent said he served his 12-month prison sentence. No additional rehabilitation was required by the court. He stated that he did not complete coursework in ethics, he used “self-reflection.” He has tried to be the person he was raised to be, with morals and values. His wants to be a role model for his son. Between 2019 and 2020, prior to sentencing, he earned a master’s degree in health administration.

CHARACTER REFERENCE LETTERS

15. Respondent provided the following character reference letters:

- Hien and David Le met respondent 22 years ago when they all attended the same college. They have observed him work between school and work to serve others. He volunteered at a local temple to help tutor children and inspired troubled children to change their attitudes and behavior. He has helped many first-generation Vietnamese parents and students on the path to a better education. Respondent "has been honest about his illegal actions and his commitment to being a better person to society." This was an error in judgment and an aberration.
- Jamie Slade is director of Supportive Care Service Foundation (SCS), a nonprofit organization that helps the elderly with end-of-life issues. Respondent volunteers at SCS and is "instrumental" in advancing its mission. Respondent testified that Mr. Slade is aware of his felony conviction involving money laundering, and Mr. Slade allowed respondent to continue to volunteer at SCS.
- Hao N. Thai, M.D., wrote that he and respondent met in college more than 20 years ago. He understands that respondent is "facing some problems with the law." Dr. Thai describes respondent as an honest man, a good friend, and a caring person who will help whoever needs help.
- Esther Nguyen, Pharm.D., is respondent's cousin. They grew up together in Vietnam. She describes him as "honest, reliable, and kind-hearted." A "crucial value" to respondent is serving others. She is aware that respondent made an "uncharacteristic mistake of healthcare fraud." Respondent has

"expressed his desire to continue to help others and make meaningful contributions to society." Practicing pharmacy is a passion for respondent.

- Michelle Pham, Pharm.D., has known respondent for nine years and wrote that she is "a colleague turn [sic] friend." She described respondent as "respected and responsible," with a "good moral character and strong family values." Respondent confided in her about his illegal actions and "showed great remorse." She asked that he be given a second chance. The author also described respondent as "trusting and gullible" and wrote that this has led to bad business decisions. Respondent testified that this is Ms. Pham's opinion, but he takes responsibility for his actions.
- Glen Bean, a friend of respondent, described him as "well-loved and respected." He is aware that respondent committed a crime but he is not aware of any details. It is "out-of-character" for respondent "to do anything that could have [sic] ill effect" on anyone.

Costs of Prosecution

16. The Deputy Attorney General who prosecuted the case executed a declaration regarding the costs of prosecution. Attached to his declaration is a document entitled "Matter Time Activity by Professional Type," which identified the tasks performed, the time spent on each task, and the hourly rate. Complainant established that the reasonable cost of prosecution was \$5,045.

LEGAL CONCLUSIONS

Purpose of Disciplinary Proceedings

1. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 4001.1.)

Burden and Standard of Proof

4. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.)

5. The standard of proof in an administrative proceeding seeking to suspend or revoke a license that requires substantial education, training, and testing, such as the pharmacist license at issue here, is "clear and convincing evidence" to a reasonable certainty. (*Ettinger, supra*, 135 Cal.App.3d at pp. 855-856.)

6. "Clear and convincing evidence" means evidence that is "'so clear as to leave no substantial doubt'; 'sufficiently strong to command the unhesitating assent of

every reasonable mind.' [Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

7. In a disciplinary proceeding, the burden of proof is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

Applicable Law

8. Business and Professions Code section 482, subdivision (a), requires the board to develop criteria to evaluate the rehabilitation of a licensee when considering suspension or revocation of a license under section 490. Subdivision (b) requires the board to consider whether a licensee has made a showing of rehabilitation if the licensee has completed the criminal sentence at issue without a violation.

9. Business and Professions Code section 490 states:

(a) . . . a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or

duties of the business or profession for which the licensee's license was issued.

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

10. Business and Professions Code section 493 states:

(a) . . . in a proceeding conducted by a board within the department pursuant to law to . . . suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or

duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

11. Business and Professions Code section 4301 authorizes the board to take disciplinary action against a licensee who is guilty of unprofessional conduct. Subdivision (f) defines unprofessional conduct to include acts of moral turpitude, dishonesty, fraud and deceit. Subdivision (l) defines unprofessional conduct to include a conviction of a crime substantially related to the qualifications, functions and duties of the licensed profession.

12. California Code of Regulations, title 16, section 1770, states:

(a) For the purpose of denial, suspension, or revocation of a personal or facility license . . . a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, . . . if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to

perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination . . . the board will consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation . . .

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

(1) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, governing the practice of pharmacy.

[¶] . . . [¶]

(3) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, relating to government provided or government supported healthcare.

(4) Involve dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.

[¶] . . . [¶]

13. California Code of Regulations, title 16, section 1769, subdivision (c), states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

(1) Nature and gravity of the act(s) or offenses.

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offenses.

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

Cause Exists to Discipline Respondent's License

14. Complainant established by clear and convincing evidence that cause exists under Business and Professions Code sections 490 and 4301, subdivision (l), to impose discipline because respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacist, when on November 22, 2021, he was convicted of conspiracy to commit money laundering in violation of Title 18 United States Code section 371. Respondent used his pharmacist license issued by the board to participate in this unlawful scheme. Pharmacists are expected to be honest, trustworthy, and exercise good judgment. Respondent's conviction demonstrated a lack of good judgment and an inability to perform the functions of a pharmacist in a manner consistent with the public health, safety, or welfare.

15. Complainant established by clear and convincing evidence that cause exists under Business and Professions Code section 4301, subdivision (f), to impose discipline for unprofessional conduct because respondent engaged in acts of moral turpitude when he participated in this unlawful scheme. Pharmacists are expected to

be honest, trustworthy, and exercise good judgement. Respondent's conduct demonstrated a lack of good judgment and an inability to perform the functions of a pharmacist in a manner consistent with the public health, safety, or welfare.

The Board's Disciplinary Guidelines

16. With causes for discipline having been found, the degree of discipline to imposed must now be determined. The board has set forth Disciplinary Guidelines (Rev. 2/2017), incorporated by reference in its regulations (Cal. Code Regs., tit. 16, § 1760), to assist in determining the appropriate level of discipline. The guidelines provide in part:

The California Pharmacy Law identifies offenses for which the board may take disciplinary action against the license. Included among grounds for discipline are violations of the Pharmacy Law itself, violations of regulations promulgated by the board, and violations of other state or federal statutes or regulations.

For those licenses issued to pharmacists, the board has identified four categories of violations and their associated recommended minimum and maximum penalties. These categories are arranged in ascending order from the least serious (Category I) to the most serious (Category IV).

Category II provides recommended discipline for violation(s) with serious potential for harm, as well as for violations involving disregard for public safety or for the laws or regulations pertaining to pharmacy, and violations that reflect on ethics and criminal convictions not involving alcohol, dangerous drugs and/or dangerous devices, or controlled substances.

Category II recommended maximum discipline is revocation; the minimum discipline is revocation stayed, with three years' probation and all standard terms and conditions.

17. The following factors were considered in determining whether the maximum or minimum penalty is imposed and the considerations are as follows:

1. actual or potential harm to the public – Respondent's conduct resulted in a financial loss to TRICARE for which respondent is paying the court-ordered restitution.

2. actual or potential harm to any consumer – Respondent's conduct posed potential harm to consumers who received the compounded medications.

3. prior disciplinary record, including level of compliance with disciplinary order(s) – Respondent has no prior disciplinary record.

4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s) – Respondent received no prior warnings.

5. number and/or variety of current violations – The unlawful scheme occurred over a period of approximately two years but respondent was convicted of one violation.

6. nature and severity of the act(s), offense(s) or crime(s) under consideration – Respondent's acts posed a threat to the health, safety and well-being of customers who received the unnecessary compounded medications. There was no evidence that any customers were in fact harmed by taking these medications.

7. aggravating evidence – Respondent completed his prison sentence less than one year ago; respondent's conduct occurred less than four years after he obtained his pharmacy license.

8. mitigating evidence – Respondent fully cooperated with authorities in their investigation; he fully complied with his prison sentence.

9. rehabilitation evidence – Respondent's rehabilitation evidence is discussed in paragraph 21 below.

10. compliance with terms of any criminal sentence, parole, or probation – Respondent served his criminal sentence of 12 months.

11. overall criminal record – Respondent has no other criminal record.

12. time passed since the act(s) or offense(s) – The acts occurred between March 2015 and December 2016 or between six to eight years ago.

13. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct – Respondent's conduct was intentional and he knowingly participated in the scheme.

14. financial benefit to the respondent from the misconduct – Respondent received \$2 million from the reimbursements from Mr. Le.

Rehabilitation

18. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and

regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

19. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

20. The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

21. Respondent admitted that he was guilty of all allegations made against him in the Information. He made no excuses for his conduct. On numerous occasions at hearing, he expressed remorse for his actions, and his remorse was corroborated by statements of several authors of character letters that respondent had expressed his remorse to them. Respondent was honest with several individuals about his actions and his conviction although some authors of character letters and Dr. Tran were not fully aware of the details of what had occurred. Respondent obtained his master's degree in health administration in 2020 to 2021, prior to his conviction. Respondent provided evidence that he volunteers for a foundation assisting the elderly.

Evaluation

22. Respondent's criminal acts were serious. His conduct posed a threat to the health and well-being of numerous individuals and undermined the integrity of the system on which public confidence in the pharmaceutical profession is founded. Respondent's conduct arose directly out of his licensure. The legal, ethical and moral

pressures of a daily practice as a pharmacist come in many forms. Besides raw greed and self-aggrandizement, the pressures may include the sincere but misguided desire to please.

Respondent admitted to each of the allegations against him in the Information. He acknowledged that it is important and expected by the public that a pharmacist is trustworthy, honest, uses good judgment, and puts patients first. He testified that by his actions he failed to meet these expectations.

He expressed remorse for his conduct. His unlawful conduct occurred more than six years ago. He completed his criminal sentence and is not on probation. His numerous expressions of remorse for his actions were sincere. His testimony was credible and forthright. Based on the totality of the evidence, public protection does not require that respondent's license be revoked. The stayed revocation and three years' probation will adequately protect the public because respondent's conduct and practice of pharmacy will be supervised by a pharmacist approved the board and will be monitored by the board.

Costs of Enforcement

23. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate 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." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Bus. & Prof. Code, § 125.3, subd. (c).) The reasonable costs in this matter were \$5,045.

24. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

25. Considering the *Zuckerman* factors, the scope of the investigation was appropriate to the allegations and the deputy attorney general who tried the matter was very well prepared. Respondent was successful in getting the charges reduced; respondent appeared to assert a good faith belief in the merits of his position; and respondent raised a colorable challenge to the proposed discipline. While respondent testified that he is financially unable to pay costs, his testimony was not persuasive. Accordingly, the costs of \$5,045 are deemed reasonable, and respondent shall pay this amount to the board per the schedule determined by the board.

ORDER

Pharmacist License Number RPH 66285 issued to respondent Nha Le Tuan Truong is revoked. However, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

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

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

2. Report to the Board

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

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of this decision in case number 7361 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known.

Respondent shall also include the reason(s) for leaving the prior employment.

Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring.

Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7361 and the terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the

respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving in the role(s) described in (a), (b), or (c) during the period of probation, respondent shall cause the persons taking over the roles to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case 7361 and the terms and conditions imposed thereby.

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

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 7361 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacist, or any position for which a pharmacist license is a requirement or criterion for

employment, whether the respondent is an employee, independent contractor or volunteer.

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

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

8. Restrictions on Supervision and Oversight of Licensed Facilities

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible 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 shall pay to the board its costs of investigation and prosecution in the amount of \$5,045. Respondent 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 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 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'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 cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent shall no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

13. Practice Requirement – Extension of Probation

Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent 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'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 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 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 violates probation in any respect, the board, after giving respondent 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 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. Supervised Practice

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist licensed by and not on probation with the board, to serve as respondent's practice supervisor. As part of the documentation submitted, respondent 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 7361, 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 may practice only under the required level of supervision by an approved practice supervisor. If, for any reason, including change of employment, respondent is no longer supervised at the required level by an approved practice supervisor, within ten (10) days of this change in supervision respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist licensed by and not on probation with the board, to serve as respondent's replacement practice supervisor. As part of the documentation submitted, respondent 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 7361 and is

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

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

- Failure to nominate an initial practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within thirty (30) days;
- Failure to nominate a replacement practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within ten (10) days;
- Practicing in the absence of an approved practice supervisor beyond the initial or replacement nomination period; or
- Any failure to adhere to the required level of supervision.

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

16. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall provide proof of enrollment upon request. Within five (5) days of completion, respondent 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. No Ownership or Management of Licensed Premises

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

18. Completion of Probation

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

DATE: August 21, 2023

Marion Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings

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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:

Case No. 7361

14 **NHA LE TUAN TRUONG**
15 **9767 Weare Ave.**
Fountain Valley, CA 92708

ACCUSATION

16 **Pharmacist License No. RPH 66285**

17 Respondent.
18
19

20 **PARTIES**

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

23 2. On or about October 14, 2011, the Board issued Pharmacist License Number RPH
24 66285 to Nha Le Tuan Truong (Respondent). The Pharmacist License was in full force and effect
25 at all times relevant to the charges brought herein, and will expire on September 30, 2023, unless
26 renewed.

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28 //

1 **JURISDICTION**

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

5 4. Code section 4300, subdivision (a), states, "Every license issued may be suspended or
6 revoked."

7 5. Code section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

14 (a) Each board under this code shall develop criteria to evaluate the rehabilitation
15 of a person when doing either of the following:

16 (1) Considering the denial of a license by the board under Section 480.

17 (2) Considering suspension or revocation of a license under Section 490.

18 (b) Each board shall consider whether an applicant or licensee has made a
19 showing of rehabilitation if either of the following are met:

20 (1) The applicant or licensee has completed the criminal sentence at issue
21 without a violation of parole or probation.

22 (2) The board, applying its criteria for rehabilitation, finds that the applicant
23 is rehabilitated.

24

25 (d) This section shall become operative on July 1, 2020.

26 7. Code section 490 states:

27 (a) In addition to any other action that a board is permitted to take against a
28 licensee, a board may suspend or revoke a license on the ground that the licensee has
been convicted of a crime, if the crime is substantially related to the qualifications,
functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any
authority to discipline a licensee for conviction of a crime that is independent of the

1 authority granted under subdivision (a) only if the crime is substantially related to the
2 qualifications, functions, or duties of the business or profession for which the licensee's
3 license was issued.

4 (c) A conviction within the meaning of this section means a plea or verdict of
5 guilty or a conviction following a plea of nolo contendere. An action that a board is
6 permitted to take following the establishment of a conviction may be taken when the

7 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
8 or when an order granting probation is made suspending the imposition of sentence,
9 irrespective of a subsequent order under Section 1203.4 of the Penal Code.

10

11 8. Code section 493 states:

12 (a) Notwithstanding any other law, in a proceeding conducted by a board within
13 the department pursuant to law to deny an application for a license or to suspend or
14 revoke a license or otherwise take disciplinary action against a person who holds a
15 license, upon the ground that the applicant or the licensee has been convicted of a crime
16 substantially related to the qualifications, functions, and duties of the licensee in
17 question, the record of conviction of the crime shall be conclusive evidence of the fact
18 that the conviction occurred, but only of that fact.

19 (b) (1) Criteria for determining whether a crime is substantially related to the
20 qualifications, functions, or duties of the business or profession the board regulates
21 shall include all of the following:

22 (A) The nature and gravity of the offense.

23 (B) The number of years elapsed since the date of the offense.

24 (C) The nature and duties of the profession.

25 (2) A board shall not categorically bar an applicant based solely on the type
26 of conviction without considering evidence of rehabilitation.

27 (c) As used in this section, "license" includes "certificate," "permit," "authority,"
28 and "registration."

....

9. Code section 4301 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 includes, 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.

...

(I) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the

circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (c), states:

Suspension or revocation of a license.

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

(1) Nature and gravity of the act(s) or offenses.

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offenses.

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

11. California Code of Regulations, title 16, section 1770, states:

1 (a) For the purpose of denial, suspension, or revocation of a personal or facility
2 license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the
3 Business and Professions Code, a crime, professional misconduct, or act shall be
4 considered substantially related to the qualifications, functions or duties of the practice,
5 profession, or occupation that may be performed under the license type sought or held
6 if to a substantial degree it evidences present or potential unfitness of an applicant or

7
8 licensee to perform the functions authorized by the license in a manner consistent with
9 the public health, safety, or welfare.

10 (b) In making the substantial relationship determination required under
11 subdivision (a) for a crime, the board will consider the following criteria:

12 (1) The nature and gravity of the offense;

13 (2) The number of years elapsed since the date of the offense; and

14 (3) The nature and duties of the practice, profession, or occupation that may
15 be performed under the license type sought or held.

16 (c) For purposes of subdivision (a), substantially related crimes, professional
17 misconduct, or acts shall include, but are not limited to, those which:

18 (1) Violate or attempt to violate, directly or indirectly, or to aid, abet or
19 conspire to violate, any provision of law of this state, or any other jurisdiction,
20 governing the practice of pharmacy.

21 (2) Violate or attempt to violate, directly or indirectly, or to aid, abet or
22 conspire to violate, any provision of Chapter 13 (commencing with Section 801) of
23 Title 21 of the United States Code regulating controlled substances or any law of this
24 state, or any other jurisdiction, relating to controlled substances or dangerous drugs.

25 (3) Violate or attempt to violate, directly or indirectly, or to aid, abet or
26 conspire to violate, any provision of law of this state, or any other jurisdiction, relating
27 to government provided or government supported healthcare.

28 (4) Involve dishonesty, fraud, deceit, or corruption related to money, items,
documents, or personal information.

(5) Involve a conviction for driving under the influence of drugs or alcohol.

COST RECOVERY

12. Code section 125.3 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.

//

1 **FACTUAL BACKGROUND**

2 13. At all relevant times, Respondent was licensed as a pharmacist in Southern
3 California. Respondent controlled and operated the Nha Truong Foundation (“NTF”),
4 purportedly organized pursuant to Title 26, United States Code, Section 501(c)(3) to receive and
5 disburse funds for non-profit, charitable purposes. Respondent had sole control over NTF’s
6 general operating account held at Bank of America.

7 **United States District Court, Central District, Case No. 8:18-cr-00119-RGK-4**

8 14. On or about November 22, 2021, in a criminal proceeding entitled *United States of*
9 *America v. Nha Le Tuan Truong et al.*, United States District Court, Southern District of
10 California, Case Number 8:18-cr-00119-RGK-5, Respondent pled guilty and was convicted of
11 Conspiracy to Commit Money Laundering (18 U.S.C. § 371). Additional counts of Money
12 Laundering (18 U.S.C. § 1956(a)(1)(B)(i) & 2(b)) were dismissed pursuant to a plea agreement.
13 Respondent was sentenced to twelve months in prison, and ordered to pay a court assessment and
14 restitution.

15 *Factual Basis of Offense*

16 15. Beginning on or about a date unknown, but at least as early as March 2015, and
17 continuing to in or about December 2016, Respondent, together with others, executed a wide-
18 ranging scheme to defraud and obtain money from TRICARE and the Amtrak Union Benefits
19 Plan (AMPLAN), in connection with the delivery of and payment for health care benefits.

20 16. In order to carry out the scheme, Respondent committed the following conduct as
21 alleged in the Indictment:

22 a. Respondent and/or co-conspirators caused compounded medications
23 prescription forms to be prepared and distributed to marketers that identified multiple
24 compounded medications formulations, which were included on the forms and selected by
25 the marketers because they provided the maximum possible TRICARE and AMPLAN
26 reimbursements rather than based on individual patient needs and medical necessity.

27 b. After obtaining beneficiaries’ personal and insurance information, marketers
28 used the form provided by Respondent and/or co-conspirators to designate prescriptions to

1 beneficiaries that such marketers selected as appropriate, despite having no health care
2 training, and which would maximize TRICARE reimbursements and, in turn, the amount
3 of kickbacks they would receive under their agreement with TC Medical Pharmacy
4 (TCMP). Marketers then caused the authorized prescriptions to be sent to TCMP and Mars
5 Hill Pharmacy (MPH) for fulfillment, both pharmacies operated by co-conspirators.

6 c. Respondent, knowing that the reimbursements that TCMP received from
7 TRICARE were the proceeds of unlawful activity, agreed with co-conspirator Tony Le to
8 allow the NTF to be used to hold those funds, thereby concealing the sources and location
9 of those funds.

10 d. Respondent would transfer the fraudulently obtained reimbursements back to
11 Tony Le at such time as Tony Le deemed appropriate for such returns because, among
12 other reasons, Tony Le had determined that the likelihood that TRICARE would attempt to
13 recover such proceeds had diminished

14 17. Throughout the course of the scheme, Respondent's non-profit, NTF, received and
15 later retransmitted \$1,150,000 to co-conspirators.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(November 22, 2022 Criminal Conviction for Conspiracy to Commit Money Laundering)**

18 18. Respondent has subjected his license to disciplinary action under Code sections 490
19 and 4301, subdivision (I), because on or about November 22, 2022, as more fully set forth in
20 paragraphs 13 through 17, above, incorporated herein by this reference, Respondent was
21 convicted of crimes that are substantially related to the qualifications, functions, and duties of a
22 licensed pharmacist.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Commission of Acts Involving Moral Turpitude)**

25 19. Respondent has subjected his license to disciplinary action under Code section 4301,
26 subdivision (f), for unprofessional conduct, because Respondent engaged in acts of moral
27 turpitude, as more fully set forth in paragraphs 13 through 17, above, incorporated herein by this
28 reference.

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PRAYER

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

- 1. Revoking or suspending Pharmacist License Number RPH 66285, issued to Respondent Nha Le Tuan Truong;
- 2. Ordering Respondent Nha Le Tuan Truong to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 1/25/2023

Sodergren,
Anne@DCA

Digitally signed by
Sodergren, Anne@DCA
Date: 2023.01.25 08:57:34
-08'00'

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

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