

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

In the Matter of the Accusation Against:

CHAU NGUYEN; AKA CINDY LE, Respondent

Pharmacist License No. RPH 59631

Agency Case No. 7362

OAH No. 2023040596

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 August 9, 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.

Kathy W. Nichols, Carlson & Jayakumar, LLP, represented respondent Chau Nguyen; aka Cindy Le.

Oral and documentary evidence was received, the record closed, and the matter was submitted for decision on August 9, 2023.

The ALJ issued a Proposed Decision on September 7, 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. Counsel for complainant timely filed written argument; no written argument was submitted on behalf of respondent.

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

FACTUAL FINDINGS

Background Information

1. On June 12, 2007, the board issued Pharmacist License No. RPH 59631 to respondent. This license will expire on September 30, 2024, if not renewed.
2. On January 19, 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 costs of investigation and enforcement.
3. Respondent timely filed a Notice of Defense, and the August 9, 2023 hearing followed.

Complainant's Evidence

THE INDICTMENT

4. The following is a summary of information obtained from allegations in the indictment, filed on June 21, 2018:

5. Thu Van Le, aka Tony Le, was a pharmacist licensed by California and owner of TC Medical Pharmacy (TCMP). Mr. Le and respondent (who were married at the time) were co-operators of TCMP and the beneficial co-owners of numerous bank and financial institutions accounts.

6. TRICARE is a health care benefit program, as defined by 18 U.S.C. § 24, subdivision (b), and a federal health care program, as defined by 42 U.S.C. § 1302a- 7b, subdivision (f)(1), that provides health care benefits, items, and services to Department of Defense beneficiaries world-wide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. TRICARE provides health care benefits for certain prescription drugs, including certain compounded drugs,¹ that are medically necessary and prescribed by a licensed physician.

¹ 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

7. AMPLAN is a health care benefit plan established by the National Railroad Passenger Corporation, dba Amtrak, that provides medical benefits, items, and services to employees and their qualified dependents. AMPLAN is a health care benefit program, as defined by 18 U.S.C. § 24, subdivision (b).

8. In June 2014, Mr. Le, on behalf of TCMP, executed a TRICARE network agreement that authorized TCMP to submit claims for reimbursement for dispensing prescription drugs for TRICARE beneficiaries.

9. Beginning as early as March 2015, and continuing to December 2016, Mr. Le, respondent, and others, executed a wide-ranging scheme to defraud and obtain money from TRICARE and AMPLAN in connection with the delivery of and payment for health care benefits. Agreements were executed between Mr. Le on behalf of TCMP and co-schemers known as marketers, to pay kickbacks for the referral of compounded medications prescriptions. Mr. Le and others prepared compounded

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.

medications prescriptions and submitted claims to TRICARE and AMPLAN; reimbursement proceeds were deposited into an account, and then transferred to other banks to conceal the source of the funds; and illegal kickbacks, identified as loans or bonuses, were paid to marketers.

10. Respondent admitted to the following conduct as alleged in the indictment:

a. Respondent caused compounded medications 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 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 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 (MHP) for fulfillment.

c. Respondent knowingly submitted false and fraudulent claims for reimbursement for prescriptions to TRICARE and AMPLAN.

CRIMINAL CONVICTION

11. On or about August 22, 2022, in a criminal proceeding entitled *United States of America v. Chau Nguyen, aka Cindy Le, et al.*, United States District Court,

Southern District of California (U.S. District Court), Case Number 8:18-cr-00119-RGK-2, respondent pled guilty and was convicted of violating Title 18 United States Code section 1347, health care fraud. Respondent was sentenced to one day in prison and placed on supervised release for a term of three years, to include 12 months of home detention. She was ordered to pay a \$100 court assessment and restitution.

TESTIMONY OF ELHAM DELUNE, PHARM.D.

12. The following is a summary of the testimony of Dr. Elham Delune: She became a licensed pharmacist in 2010 and has been employed as an inspector with the board since 2016. Her duties as an inspector include investigating complaints alleging violations of pharmacy law, inspecting pharmacies and wholesalers, and conducting interviews. Prior to working with the board, she practiced as a staff pharmacist and a pharmacist in charge (PIC) at several pharmacies.

Dr. Delune reviewed the board's investigation report, respondent's records of her plea and conviction, and the accusation. She assessed that respondent's conviction for health care fraud directly related to the duties of a pharmacist. The laws and regulations are in place to protect the public. Pharmacists must use good judgment. Here, unnecessary prescriptions were written for patients without a doctor's evaluation which may have caused serious harm to patients' health. This was an abuse of the patients' insurance when unwanted prescriptions were filled and billed to the insurance carrier. This violated patients' trust in their pharmacist. Dr. Delune said this was a serious incident and respondent broke the law. Even though respondent is not currently working as a pharmacist, with her pharmacist license she could work as a "floater" and dispense medications. Dr. Delune agreed that respondent could work outside of a pharmacy in other settings that do not have contracts with federal programs such as Medicare.

Respondent's Evidence

TESTIMONY OF JOHN NGUYEN

13. John Nguyen is CEO of Metti Tech USA Corporation (Metti Tech) and a partner of Metti FDA Corp. (Metti FDA). Metti Tech is a pharmaceutical manufacturer of vitamin and pharmaceutical products. Metti FDA provides regulatory services consulting to overseas manufacturers to assist them in obtaining FDA approvals.

Mr. Nguyen met respondent at the end of 2020 or early 2021 at a non-profit event where she was distributing personal protective equipment (PPE). He became aware of the extent of her volunteer work in the Vietnamese community, which included serving as a "life coach" counseling a group of 100 parents and children with psychological problems and hosting a program on TV Saigon regarding mental health issues. Respondent told Mr. Nguyen about her criminal conviction. Respondent began working as a consultant for Metti FDA. In early 2022, Mr. Nguyen recommended her for an executive position at Metti FDA. During the interview, respondent disclosed her conviction to Metti FDA's board members and asked that she be given time for a resolution to be reached. Metti FDA's board agreed. In June 2022, respondent became Chief Operating Officer (COO) of Metti FDA. Respondent is currently on probation in her position and receives an annual salary of \$70,000. After her license issue is resolved, she will receive a salary of \$150,000. When a project is completed and profitable for the company, respondent will receive a bonus of 10 percent of the company's profit.

Mr. Nguyen explained that clients of Metti FDA are mostly overseas manufacturers who want to sell their products in the United States. These manufacturers contract with Metti FDA to assist in the regulatory process. Respondent

compares regulations in other countries with those of the United States and the FDA, provides this information to the overseas manufacturers, and submits documents to the FDA on behalf of these manufacturers. Respondent currently leads four projects, including a project assisting a Vietnamese company to obtain approval in the United States. She will be required to travel to Vietnam to work on this project, but not until there is a resolution regarding her license.

Respondent has been upfront with Mr. Nguyen from the beginning. She told him that she was involved with a pharmacy for two weeks. He understood that the incident involved compounded medication, and fraud because it was not recommended by the patient's doctor. He has read the indictment and her plea agreement. He believes respondent was a victim because this was only two weeks and "it (the scheme) had been going on for a long time." She made a mistake and she was reckless by trusting her husband and not using her own judgment.

Although a pharmacist license is not currently necessary for her position, if respondent were to lose her license it would be a problem for the firm because clients or employers on each project will want to do their own due diligence. Mr. Nguyen does not know if Mett FDA would terminate respondent if she were no longer a licensed pharmacist, but he would try to convince them to keep her. Respondent is an asset to his company.

TESTIMONY AND LETTER OF REFERENCE BY DR. KHANG TRAN

14. Khang Tran, Pharm.D., became licensed as a pharmacist in 2005. He has been employed as a pharmacist at Lakewood Regional Medical Center since 2008. The following is a summary of Dr. Tran's testimony and a letter of reference, which was consistent with his testimony. He met respondent in 2007 when she was completing

her residency at Fountain Valley Hospital. They had not communicated for seven to eight years, but in 2016 they reconnected. When Dr. Tran's wife became ill and he became the sole caregiver for his young daughter, respondent provided understanding and support. Dr. Tran wrote of respondent's "deep investment to serve patients and her community." At the time he wrote the letter on October 17, 2021, he knew that she was on probation, but he was not aware of her plea or details of her case. Mr. Le "explained briefly" what had happened. Dr. Tran was surprised to hear that respondent was involved with Mr. Le's illegal business. He still supports respondent but not her wrongdoing. Respondent is a strong, independent woman. Dr. Tran does not believe respondent would do something illegal if Mr. Le asked her to do so.

TESTIMONY OF RESPONDENT

15. Respondent was born in Vietnam. Soon after her birth her parents moved to the United States and she was left to live with her grandparents. She first met her mother when she was 10 years old. A year later, her grandmother told her she was moving to the United States to live with her mother. She traveled 20 hours on a plane alone. She spoke no English. She lived with her parents in a converted garage. Initially she was happy and her mother "was good," but this soon changed. She was emotionally and physically abused. She felt unloved and not good enough. She was bullied at school because she did not speak English. When she was 33 years old she learned that her "father" was not her biological father. She confronted her mother, who was upset and "rejected me." She flew to Vietnam and met her biological father.

Respondent graduated from the University of Irvine, attended pharmacy school and one additional year of residency, and obtained her Pharm.D. in 2007. She completed her residency at a hospital and got a job in 2008 at Presbyterian Hospital in Whittier. She worked full-time until 2015, then part-time in 2016 and 2017. She

received no complaints regarding her work performance. She received recognition from pharmacists and medical doctors. She was involved in academia and served as a preceptor for pharmacy students. She loved her job.

Respondent met her now ex-husband, Mr. Le, in pharmacy school and they married in 2008. They initially had a good life but Mr. Le was business-oriented. Because of Mr. Le's bankruptcy, he asked her to be listed on the lease for a pharmacy, TCMP, and she agreed. After the indictment, she found that her name was listed on a property title that she was not aware of. Mr. Le communicated with and confided in respondent's mother regarding financial matters. Respondent was never part of their discussions. Respondent's mother lent Mr. Le money and called Mr. Le her son.

Respondent's whole life revolved around her job and her daughter, who was born in 2011. She and Mr. Le "had a kind of agreement" that each did their own job. Her salary went into their joint account and he paid all their bills.

16. In April 2015, Mr. Le said he had to fly to North Carolina, and he asked respondent to oversee TCMP while he was gone. Mr. Le said all she had to do was open and close the pharmacy, and check inventory. She was working part-time at the hospital and took time off to help Mr. Le. There were three other pharmacists working at TCMP. She spent six to eight hours per day in the pharmacy. She did not know at the time that she was the PIC. When she reviewed discovery in this matter, she asked Mr. Le when she signed PIC paperwork, and he showed her a document. She did not understand this made her the PIC. The signature on the document did not appear to be hers, but she declined to authenticate the signature because of the implication on Mr. Le if she had not signed the document.

17. Respondent was not familiar with compounding medications and she did no compounding of medications at TCMP. The procedure at TCMP was that a pharmacist would compound medications and call the doctor and the patient. During those two weeks, respondent called patients a few times. One patient she called stated that he was not aware of the prescription. Respondent called the prescribing physician, Dr. Caldwell, who confirmed that she had written the prescription and that the patient had probably forgotten. Respondent looked at "less than 10" prescriptions because there were three other pharmacists working at the time. Each prescription had a full profile/diagnosis attached to the prescription. The other pharmacists were verifying and each put their signatures on the prescriptions. They did make calls. She believed that they were doing their due diligence.

When respondent questioned Mr. Le about the pre-checked prescription pads, he led her to believe that these were common in compounding pharmacies. He explained that the pre-checked prescription pads were necessary due to the complexity of the formulas and because of the very limited number of formulas available to the physicians. She noticed several prescriptions, written for different patients, but where the same formulas were "checked off" by the same physician. Mr. Le's explanation that this was common due to the limited number of formulas available seemed reasonable to her at the time because in a hospital setting, there were days when she checked off 200 IV bags of the same medication, for different patients.

Compounding medications was different than what she was used to in a hospital setting, where she only dealt with IVs and verified prescriptions. The doctors submitted paperwork, she confirmed the drug interactions and suggested dosages.

She never saw "tablets." Nurses used Pyxis.² Once approved by the pharmacists, all medications were stored in a computer-operated cabinet in the hospital.

18. From 2015 through 2018 she knew that Mr. Le was under investigation. She went with him to see his attorney. She did have an attorney but she had no idea that she could possibly be arrested. In June 2018, federal agents arrived and arrested her and Mr. Le. She was taken to federal prison and released later that same day. She was shocked, afraid, and worried about her daughter. She suffered from depression. She had a lot of questions. At the time, she did not know about the money Mr. Le received. She now feels that he took advantage of her. She trusted him completely. He used her good name on the TCMP lease and to purchase assets.

The relationship between respondent and Mr. Le "deteriorated quickly," and he divorced her. She could not fathom filing for or getting a divorce because "my oath was until death do us part." Because of Mr. Le's criminal involvement she left her job at the hospital in 2017 to protect her daughter and her hospital's reputation.

19. In reviewing the indictment, respondent said MHP is the North Carolina pharmacy that Mr. Le acquired during the two weeks he was gone. She was not affiliated with MHP. Respondent had nothing to do with TRICARE and did not know what TRICARE was at that time. It was only after the criminal investigation that she became aware of the dollar amount of reimbursements that were received from TRICARE. She was not aware of any agreements between TCMP and others until the indictment. She does not know Robert Paduano or Thomas Powers, identified in the indictment as "co-schemers." At Mr. Le's direction, she dropped off a pre-printed

² Pyxis is a computerized medication dispensing system.

prescription pad to Anthony Paduano in Costa Mesa. Mr. Le said that marketers hand these pre-printed prescription pads to the doctors for their signatures. She was led to believe, logically, that the doctors would also fill out the prescriptions.

Because respondent's name was on the TCMP lease, an account was opened for TCMP at Bank of America in both her and Mr. Le's names. She was charged with four counts in the indictment relating to financial transactions to and from this Bank of America account. She made none of these transactions and was not aware of these transactions until after discovery in this matter. She had no idea that fraud was conducted until the facts started to come out while Mr. Le was being investigated. She confronted Mr. Le and he disclosed that he was being investigated for kickbacks and these could be payments to marketers. When she learned of kickbacks, she knew this was illegal.

Respondent was not contacted until after the indictment. She wished she had the chance to tell her side or to answer questions. She had no idea she would be charged in this matter, partly because she was not previously aware and had never been involved. She felt betrayed and used because Mr. Le knew that she was not involved. He was only looking out for himself. She was upset that he exposed them to the possibility that they both would be in prison, leaving their daughter alone. On June 26, 2021, she pled to one count of health care fraud. She was ordered to pay restitution of \$7,693,701 for claims made to TRICARE and AMPLAN. Since September 2022, she has paid over \$2 million plus 10 percent of her net income toward restitution; she continues to pay 10 percent of her net income. When respondent went to her sentencing hearing, she was aware that the government was seeking a long prison term. The prosecutor recommending supervised release. She said, "The prosecutor came to my defense and understanding." The prosecutor told the judge

that he was aware that this was a deviation from the sentencing guidelines. At the end of the sentencing, the prosecutor and respondent exchanged hugs and he said to her, "Live a well life. You deserve to live a better life."

20. In October 2022, she was retained by Metti FDA as an independent project manager. Mr. Nguyen was her supervisor and he was aware of her plea agreement. He recommended her to the board of directors, and in June 2023, she became COO. In this position she oversees several projects assisting other companies to be in compliance with regulations. She is currently in charge of four contracts/projects. One of these is construction of a drug manufacturing building in Vietnam. This project is estimated to take three years to complete. It will require a lot of time for her to be in Vietnam. She has approval from the probation department but she is waiting for the judge's approval.

Respondent stated that her position at Metti FDA does not require that she have a license, however when an FDA inspector conducts an inspection, she is required to have a license. If she cannot sign as the licensed pharmacist, the project falls apart. Her license is related to the clinical component. Respondent currently trains Vietnamese pharmacists monthly and she is required to have a doctorate in pharmacy to do this training.

Respondent has discussed with her supervisors what would happen in the event she lost her pharmacist license, and she was told she would be terminated. The executive board would be "okay" if she were on probation, as long as she remains licensed. However, the company could lose the Vietnam contract. If respondent were to lose her job at Metti FDA, this would impair her ability to support herself and to pay restitution.

21. Respondent said that community service is important to her because “that is who I am. I serve.” Her community service activities include: From 2000 through 2018, she volunteered with Medical Missions, traveling to third world countries to improve medical and dental care; starting in 2020 with the COVID-19 pandemic, she organized sending PPE to Vietnam and distributing PPE in her community; every Monday evening, from 2010 through 2018, she hosted a program on Saigon TV discussing childhood trauma and raising awareness about mental health issues; in 2020, she took classes in psychology and became a life coach, and for three hours each Saturday she leads an adult and youth group discussing family and relationships issues, and meets with members one-on-one when needed; she facilitates a monthly Vietnamese hiking group; and for the past five years she has been maintaining and facilitating meditation retreats.

22. The incident left her terrified. She could no longer participate in Saigon TV, her marriage ended, and she suffered a financial crisis. Every part of her life was collapsing and she was suicidal. Respondent spent three years attending meditation retreats. She began psychotherapy before sentencing and continued until recently. Respondent provided a December 2021 letter from a licensed psychologist. After a psychological evaluation she was diagnosed with borderline personality disorder and dependency personality disorder. Respondent grew up to be obedient, it is part of her culture. She does not question authority. This was a result of her fear of being abandoned.

Her life is better now. She learned about herself, she is respected as a professional, she is involved in her community, and people reach out to her with their mental health issues. She learned to separate her emotional and work-related issues.

She has learned to say, "No" if she feels uncomfortable or something is not in line with her morality or job description.

23. On cross-examination, respondent agreed that good judgment, honesty, and putting a patient first are vital characteristics of a pharmacist. She agreed that she was taught about compounding medications in pharmacy school.

She checked patient information - date of birth, allergies, no interactions, for prescriptions she verified at TCMP. She was suspicious that the same doctor prescribed the same medication for several patients and that there was no data on what the patients had taken over time. She asked Mr. Le about this. She was suspicious because one patient said he was not taking this medication. She called probably 2 to 3 patients out of 10 prescriptions she reviewed. She was asked if she did her due diligence while at TCMP. She responded that the 10 prescriptions had full profiles and a diagnosis, attached to the prescription.

She stated that she and Mr. Le had three homes before 2015, one for themselves, one for Mr. Le's parents, and one for respondent's parents. During this time she was not aware of Mr. Le's illegal activities prior to 2015.

She was asked why a marketing person would need a personal prescription pad. She said compounded medications have limited formulas so the list on the pads made it easier for the doctors. In the past, she had seen doctors with their own stamp and a check list for convenience so she did not think this was odd. It is the job of pharmacy technicians to make phone calls for each prescription that is mailed out. The other pharmacists at TCMP did make calls and they documented that they were verifying information by putting put their signature on the prescriptions.

24. In her current job, she assists factories in Vietnam and other countries to manufacture medications that can be sold in the United States. She collects information such as names of partners, what drugs are manufactured, and whether these drugs are equivalent to what the FDA has approved. The government relies on this information but they do audits and inspections. Respondent does not produce these documents but she puts the documents together and submits a package to the FDA. She does not verify or sign any of the documents that are being sent.

She is aware that her boss, Mr. Nguyen, said he would try to keep her if she no longer had a license, but Metti FDA's board makes the decision. Metti FDA's board hired her with the information they had but they did not know there was a chance that her license may be revoked.

25. The board should let her keep her license because she "protects" herself from all insurance information. She cannot work as a floater because she is forbidden to work with a pharmacy that has government contracts. She agreed not to work in a retail setting. This was part of her plea agreement and she would never violate that agreement.

Respondent wants the board to know that she takes full responsibility for her actions. She committed a crime and is prepared to accept the consequences. There were things she should have known that she did not know. Respondent makes sure that none of her work has anything to do with patients or health insurance. She will never expose herself to that again. She will only deal with projects and equipment. She was fortunate to find a job that allows her to use her professional skills but does not present a chance to commit the crime that she committed. Respondent asked that the board reconsider its decision to revoke her license. She said, "My license is who I am."

CHARACTER REFERENCE LETTERS

26. Respondent provided various character reference letters. All authors spoke of respondent's charity work and the assistance she provides to the Vietnamese community. Tommy Nguyen, a real estate broker, is respondent's uncle and he has known her for about 21 years. He described her as honest and ethical, with a "big heart." He is aware that she is in "some type of trouble" and he asked that she be given leniency. Lien Nguyen has been a friend of respondent for more than six years. He is aware of what occurred and of her guilty plea. He wrote that respondent has a reputation for "honesty and decency." Stephanie Mehring, a life coach who worked with respondent from December 2019 through February 2021, said respondent "shared her struggles." She described respondent as intelligent and compassionate.

Three friends who have known respondent from three to six years wrote that she is a good person, caring and compassionate, and a "valuable member of society." None of these authors referenced respondent's conviction so the letters are of limited worth.

Costs of Prosecution

27. 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 \$3,890.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (Evid. Code, § 115.) 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.)

2. The standard of proof in an administrative proceeding seeking to suspend or revoke a professional license is "clear and convincing evidence" to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that is so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Law

3. 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.

4. Business and Professions Code section 490, subdivision (a) states that 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.

5. 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.

6. 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.

7. California Code of Regulations, title 16, section 1769, subdivision (c), states in part that when considering the suspension or revocation of a license on the grounds that a licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation, and will apply certain criteria in evaluating the licensee's rehabilitation, including: the nature and gravity of the acts; total criminal record; time passed since the act; and compliance with terms of sentence.

8. 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.

[¶] . . . [¶]

Respondent's Affirmative Defenses

9. Respondent asserted as affirmative defenses: (a) that the Accusation does not allege acts or omissions upon which the agency may proceed; (b) that the

Accusation is so indefinite and uncertain that respondent was unable to prepare a defense to the allegations; (c) that each cause for discipline alleged is barred by the doctrine of laches; and (d) that each cause for discipline alleged is barred by the doctrines of waiver, estoppel, and consent. Respondent presented no evidence in support of these affirmative defenses and each of these defenses is, accordingly, rejected.

Respondent asserted two additional affirmative defenses: (e) that she did not act willfully or with reckless disregard as to whether her conduct violated California laws, but rather she acted in good faith; and (f) that if she did commit any wrongful or unlawful conduct, although such is not admitted, she has properly mitigated all alleged damage such that the discipline alleged is not warranted. These defenses are also rejected as respondent's conviction is the basis for discipline.

Cause for Discipline of Respondent's License

10. Complainant established by clear and convincing evidence that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered pharmacist. Respondent signed a plea agreement and was convicted of health care fraud on August 22, 2022. This is a crime that, at least in respondent's case, involved poor judgement. While respondent genuinely seemed unaware that what she was doing was illegal and part of a scheme to defraud, the conviction stands for itself. Cause therefore exists to impose discipline against respondent's license based on Business and Professions Code sections 490 and 4301, subdivision (l).

11. Complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct when she engaged in acts of moral

turpitude and therefore subjected her license to disciplinary action under Business and Professions Code section 4301, subdivision (f).

The Board's Disciplinary Guidelines

12. 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 that pharmacy law identifies offenses for which the board may take disciplinary action against the license. These offenses include violations of 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). The guidelines state that the descriptions and examples are representative and are not intended to be comprehensive or exclusive. The ALJ concluded that respondent's conduct does not fit into any of these categories. The board does not necessarily agree with this conclusion, but as explained below, agrees that respondent provided substantial and compelling evidence of mitigating circumstances.

13. Respondent has paid more than \$2 million in restitution and continues to pay 10 percent of her salary. Although she was unaware that what she was doing was illegal, her acts posed potential harm to the patients of the "less than 10" prescriptions she reviewed. Respondent has no prior disciplinary record or prior warnings. Respondent's acts occurred over two weeks during an unlawful scheme that extended

almost two years. Respondent spent one day in prison and three years' supervised release that she will complete on March 31, 2024.

Disposition

14. Respondent acknowledged that it is vital and expected by the public that a pharmacist is trustworthy, uses good judgment, and puts patients first. Respondent's conviction was recent and she remains on supervised release through March 31, 2024. She stated that when she was working at TCMP while Mr. Le was out of town, she was not aware that she was the PIC. As a licensed pharmacist, respondent should have known that every pharmacy is required to have a PIC who is responsible for the day-to-day operations. (Bus. Prof. Code § 4113.) This is true for retail, compounding, and hospital pharmacies. It is difficult to believe that respondent worked in the pharmacy for two weeks without knowing who was in charge. Ideally, Mr. Le could have told her that she would be the PIC and pointed out that she was signing an agreement to be the PIC, but he did not do so. Respondent is personally responsible for reading and understanding a document prior to signing.

15. Even if respondent had been aware that she was the PIC, this would not have necessarily been a red flag that the prescriptions she was reviewing were part of a fraudulent scheme. This is especially true because she called Mr. Le when she had questions. She called a few patients to confirm that a medication had been prescribed to them. When a patient stated that he had not been prescribed a medication, she called his physician who confirmed that she had written the prescription for the patient and he may have forgotten. Respondent explained why she did not think it was odd to deliver a pre-printed prescription pad to Anthony Paduano. There were limited compounding formulas and this made it easier for the doctors, and she had seen other doctors with some type of pre-printed prescription pads. More importantly, she was

told that a doctor would be signing the prescription, and it was reasonable for her to believe that the doctor would also be writing the prescription.

16. Respondent had a traumatic childhood. As part of her culture she learned to be obedient. She did not question authority. Her husband did not confide in her regarding financial matters. Rather, he made financial decisions on his own. Respondent's childhood does not excuse her conduct but enforces her assertion that she did not intend to deceive or defraud. Respondent's testimony in this regard was credible and forthright.

17. The ALJ found, and the board agrees, that respondent provided substantial and compelling evidence of mitigating circumstances. Respondent's conduct was restricted to a narrow period of time. This was a two-week period in mid-April to May 1, 2015, during a scheme masterminded by Mr. Le and others that ran from March 2015 to about December 2016. The short time span lends credibility to respondent's assertion that she did not believe what she was doing was illegal. Respondent was trying to do her job to the best of her ability and relied to her detriment on Mr. Le's assurances. She delivered one prescription pad to Anthony Paduano at the request of her husband. When she was told the prescriptions were to be signed by doctors; she was led to the logical belief that doctors would also write the prescriptions. She did not knowingly submit false and fraudulent claims for reimbursement for prescriptions.

18. Respondent has taken full responsibility for her actions and conviction. Her role in the scheme was one of negligence rather than an intent to defraud. She acknowledged that she did not know things that she should have known. Respondent trusted her then husband completely, to her detriment.

19. Respondent reviewed less than ten prescriptions. She reviewed prescriptions when she was asked to do so. She called patients a few times. When a

patient stated that he had no such prescription; his physician confirmed that she had written the prescription. The other three pharmacists made calls and put their signatures on prescriptions. She believed they were doing their due diligence. When respondent noticed that several prescriptions were signed by the same doctor, she called Mr. Le, who led her to believe that this was common practice in a compounding pharmacy.

20. Respondent is a well-respected and knowledgeable pharmacist, who has been relied upon as a preceptor for other pharmacists. Mr. Nguyen was aware of her conviction but recommended her for an executive position at Metti FDA. He said she is an asset to his company and if she should lose her license, he would try to convince Metti FDA's board not to let her go. She has no prior discipline. She volunteers and is extensively involved in the Vietnamese community. She is not a threat to the public. 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, supra*, at p. 856.) Respondent is not a dishonest, immoral, disreputable, or incompetent practitioner. Respondent's testimony was sincere and persuasive.

21. In August 2022, respondent entered a plea agreement. In addition to payment of restitution, she was ordered to serve only one day in prison followed by supervised release and she was ordered to pay \$100 in court fees. At her criminal sentencing, the prosecutor's recommendation for supervised release was a deviation from the guidelines. Respondent and the prosecutor hugged and he said she deserved a better life. Under these unique circumstances, revocation or suspension would be unduly harsh. A public reproof is appropriate.

22. A public reproof is not a free pass. It constitutes the board's formal

criticism and censure of respondent. It reminds her that the same or similar misconduct will not be tolerated and likely will result in a far more serious sanction. While issuing a public reproof is not a measure of discipline that falls squarely within the disciplinary guidelines, it is the most appropriate sanction under the circumstances.

Costs of Enforcement

23. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "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." "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 \$3,890.

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 her position; respondent raised a colorable challenge to the proposed discipline; respondent has the financial ability to pay costs if she keeps working; and the scope of the investigation was appropriate in light of the alleged misconduct.

26. Accordingly, the ALJ determined that the recoverable costs were appropriately set at \$3,890, and that respondent shall pay such amount to the board.

ORDER

1. It is hereby ordered that a public reproof be issued against licensee Chau Nguyen; aka Cindy Le RPH 59631.

2. Respondent is required to report this public reproof as a disciplinary action.

///

///

3. Respondent is ordered to pay \$3,890 to the board within 30 days of the effective date of the decision and order in this case.

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

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large, sweeping initial "S".

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:

CHAU NGUYEN; AKA CINDY LE, Respondent

Pharmacist License No. RPH 59631

Agency Case No. 7362

OAH No. 2023040596

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 written in a cursive style with a large, sweeping initial "S".

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:

CHAU NGUYEN; AKA CINDY LE, Respondent

Pharmacist License No. RPH 59631

Agency Case No. 7362

OAH No. 2023040596

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 written in a cursive style with a large, sweeping initial "S".

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:

CHAU NGUYEN; AKA CINDY LE, Respondent

Pharmacist License No. RPH 59631

Agency Case No. 7362

OAH No. 2023040596

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 9, 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.

Kathy W. Nichols, Carlson & Jayakumar, LLP, represented respondent Chau Nguyen; aka Cindy Lee.

Oral and documentary evidence was received, the record closed and the matter was submitted for decision on August 9, 2023.

FACTUAL FINDINGS

Background Information

1. On June 12, 2007, the board issued Pharmacist License No. RPH 59631 to respondent. This license expired on September 30, 2022, and has not been renewed.¹

2. On January 19, 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 costs of investigation and enforcement.

3. Respondent timely filed a Notice of Defense. This hearing followed.

¹ The board's license certification stated that respondent's license "expired on September 30, 2022," however, the certification was signed on September 9, 2022. The accusation, signed on January 19, 2023, stated that respondent's license expired on September 30, 2022, and had not been renewed. Respondent referred to her license and said that she wants to retain her license, but no information was presented as to when or if her license had been renewed.

Complainant's Evidence

THE INDICTMENT

4. The following is a summary of information obtained from allegations in the indictment, filed on June 21, 2018:

5. Thu Van Le, aka Tony Le, was a pharmacist licensed by California and owner of TC Medical Pharmacy (TCMP). Mr. Le and respondent (who were married at the time) were co-operators of TCMP and the beneficial co-owners of numerous bank and financial institutions accounts.

6. TRICARE is a health care benefit program, as defined by 18 U.S. C. § 24, subdivision (b), and a federal health care program, as defined by 42 U. S. C. § 1302a-7b, subdivision (f)(1), that provides health care benefits, items, and services to Department of Defense beneficiaries world-wide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. TRICARE provides health care benefits for certain prescription drugs, including certain compounded drugs,² that are medically necessary and prescribed by a licensed physician.

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

7. AMPLAN is a health care benefit plan established by the National Railroad Passenger Corporation, dba Amtrak, that provides medical benefits, items, and services to employees and their qualified dependents. AMPLAN is a health care benefit program, as defined by 18 U.S.C. § 24, subdivision (b).

8. In June 2014, Mr. Le, on behalf of TCMP, executed a TRICARE network agreement that authorized TCMP to submit claims for reimbursement for dispensing prescription drugs for TRICARE beneficiaries.

9. Beginning as early as March 2015, and continuing to December 2016, Mr. Le, respondent, and others, executed a wide-ranging scheme to defraud and obtain money from TRICARE and AMPLAN in connection with the delivery of and payment for health care benefits. Agreements were executed between Mr. Le on behalf of TCMP and co-schemers known as marketers, to pay kickbacks for the referral of compounded medications prescriptions. Mr. Le and others prepared compounded

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.

medications prescriptions and submitted claims to TRICARE and AMPLAN; reimbursement proceeds were deposited into an account, and then transferred to other banks to conceal the source of the funds; and illegal kickbacks, identified as loans or bonuses, were paid to marketers.

10. Respondent admitted to the following conduct as alleged in the indictment:

a. Respondent caused compounded medications 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 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 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 (MHP) for fulfillment.

c. Respondent knowingly submitted false and fraudulent claims for reimbursement for prescriptions to TRICARE and AMPLAN.

CRIMINAL CONVICTION

11. On or about August 22, 2022, in a criminal proceeding entitled *United States of America v. Chau Nguyen, aka Cindy Le, et al.*, United States District Court,

Southern District of California (U.S. District Court), Case Number 8:18-cr-00119-RGK-2, respondent pled guilty and was convicted of violating Title 18 United States Code section 1347, health care fraud. Respondent was sentenced to one day in prison and placed on supervised release for a term of three years, to include 12 months of home detention. She was ordered to pay a \$100 court assessment and restitution.

TESTIMONY OF ELHAM DELUNE, PHARM.D.

12. The following is a summary of the testimony of Dr. Elham Delune: She became a licensed pharmacist in 2010 and has been employed as an inspector with the board since 2016. Her duties as an inspector include investigating complaints alleging violations of pharmacy law, inspecting pharmacies and wholesalers, and conducting interviews. Prior to working with the board, she practiced as a staff pharmacist and a pharmacist in charge (PIC) at several pharmacies.

Dr. Delune reviewed the board's investigation report, respondent's records of her plea and conviction, and the accusation. She assessed that respondent's conviction for health care fraud directly related to the duties of a pharmacist. The laws and regulations are in place to protect the public. Pharmacists must use good judgment. Here, unnecessary prescriptions were written for patients without a doctor's evaluation which may have caused serious harm to patients' health. This was an abuse of the patients' insurance when unwanted prescriptions were filled and billed to the insurance carrier. This violated patients' trust in their pharmacist. Dr. Delune said this was a serious incident and respondent broke the law. Even though respondent is not currently working as a pharmacist, with her pharmacist license she could work as a "floater" and dispense medications. Dr. Delune agreed that respondent could work outside of a pharmacy in other settings that do not have contracts with federal programs such as Medicare.

Respondent's Evidence

TESTIMONY OF JOHN NGUYEN

13. John Nguyen is CEO of Metti Tech USA Corporation (Metti Tech) and a partner of Metti FDA Corp. (Metti FDA). Metti Tech is a pharmaceutical manufacturer of vitamin and pharmaceutical products. Metti FDA provides regulatory services consulting to overseas manufacturers to assist them in obtaining FDA approvals.

Mr. Nguyen met respondent at the end of 2020 or early 2021 at a non-profit event where she was distributing personal protective equipment (PPE). He became aware of the extent of her volunteer work in the Vietnamese community, which included serving as a "life coach" counseling a group of 100 parents and children with psychological problems and hosting a program on TV Saigon regarding mental health issues. Respondent told Mr. Nguyen about her criminal conviction. Respondent began working as a consultant for Metti FDA. In early 2022, Mr. Nguyen recommended her for an executive position at Metti FDA. During the interview, respondent disclosed her conviction to Metti FDA's board members and asked that she be given time for a resolution to be reached. Metti FDA's board agreed. In June 2022, respondent became Chief Operating Officer (COO) of Metti FDA. Respondent is currently on probation in her position and receives an annual salary of \$70,000. After her license issue is resolved, she will receive a salary of \$150,000. When a project is completed and profitable for the company, respondent will receive a bonus of 10 percent of the company's profit.

Mr. Nguyen explained that clients of Metti FDA are mostly overseas manufacturers who want to sell their products in the United States. These manufacturers contract with Metti FDA to assist in the regulatory process. Respondent

compares regulations in other countries with those of the United States and the FDA, provides this information to the overseas manufacturers, and submits documents to the FDA on behalf of these manufacturers. Respondent currently leads four projects, including a project assisting a Vietnamese company to obtain approval in the United States. She will be required to travel to Vietnam to work on this project, but not until there is a resolution regarding her license.

Respondent has been upfront with Mr. Nguyen from the beginning. She told him that she was involved with a pharmacy for two weeks. He understood that the incident involved compounded medication, and fraud because it was not recommended by the patient's doctor. He has read the indictment and her plea agreement. He believes respondent was a victim because this was only two weeks and "it (the scheme) had been going on for a long time." She made a mistake and she was reckless by trusting her husband and not using her own judgment.

Although a pharmacist license is not currently necessary for her position, if respondent were to lose her license it would be a problem for the firm because clients or employers on each project will want to do their own due diligence. Mr. Nguyen does not know if Metti FDA would terminate respondent if she were no longer a licensed pharmacist, but he would try to convince them to keep her. Respondent is an asset to his company.

TESTIMONY AND LETTER OF REFERENCE BY DR. KHANG TRAN

14. Khang Tran, Pharm.D., became licensed as a pharmacist in 2005. He has been employed as a pharmacist at Lakewood Regional Medical Center since 2008. The following is a summary of Dr. Tran's testimony and a letter of reference, which was consistent with his testimony. He met respondent in 2007 when she was completing

her residency at Fountain Valley Hospital. They had not communicated for seven to eight years, but in 2016 they reconnected. When Dr. Tran's wife became ill and he became the sole caregiver for his young daughter, respondent provided understanding and support. Dr. Tran wrote of respondent's "deep investment to serve patients and her community." At the time he wrote the letter on the October 17, 2021, he knew that she was on probation, but he was not aware of her plea or details of her case. Mr. Le "explained briefly" what had happened. Dr. Tran was surprised to hear that respondent was involved with Mr. Le's illegal business. He still supports respondent but not her wrong doing. Respondent is a strong, independent woman. Dr. Tran does not believe respondent would do something illegal if Mr. Le asked her to do so.

TESTIMONY OF RESPONDENT

15. Respondent was born in Vietnam. Soon after her birth her parents moved to the United States and she was left to live with her grandparents. She first met her mother when she was 10 years old. A year later, her grandmother told her she was moving to the United States to live with her mother. She traveled 20 hours on a plane alone. She spoke no English. She lived with her parents in a converted garage. Initially she was happy and her mother "was good," but this soon changed. She was emotionally and physically abused. She felt unloved and not good enough. She was bullied at school because she did not speak English. When she was 33 years old she learned that her "father" was not her biological father. She confronted her mother, who was upset and "rejected me." She flew to Vietnam and met her biological father.

Respondent graduated from the University of Irvine, attended pharmacy school and one additional year of residency, and obtained her Pharm.D. in 2007. She completed her residency at a hospital and got a job in 2008 at Presbyterian Hospital in Whittier. She worked full-time until 2015, then part-time in 2016 and 2017. She

received no complaints regarding her work performance. She received recognition from pharmacists and medical doctors. She was involved in academia and served as a preceptor for pharmacy students. She loved her job.

Respondent met her now ex-husband, Mr. Le, in pharmacy school and they married in 2008. They initially had a good life but Mr. Le was business-oriented. Because of Mr. Le's bankruptcy, he asked her to be listed on the lease for a pharmacy, TCMP, and she agreed. After the indictment, she found that her name was listed on a property title that she was not aware of. Mr. Le communicated with and confided in respondent's mother regarding financial matters. Respondent was never part of their discussions. Respondent's mother lent Mr. Le money and called Mr. Le her son.

Respondent's whole life revolved around her job and her daughter, who was born in 2011. She and Mr. Le "had a kind of agreement" that each did their own job. Her salary went into their joint account and he paid all their bills.

16. In April 2015, Mr. Le said he had to fly to North Carolina, and he asked respondent to oversee TCMP while he was gone. Mr. Le said all she had to do was open and close the pharmacy, and check inventory. She was working part-time at the hospital and took time off to help Mr. Le. There were three other pharmacists working at TCMP. She spent six to eight hours per day in the pharmacy. She did not know at the time that she was the PIC. When she reviewed discovery in this matter, she asked Mr. Le when she signed PIC paperwork, and he showed her a document. She did not understand this made her the PIC. The signature on the document did not appear to be hers, but she declined to authenticate the signature because of the implication on Mr. Le if she had not signed the document.

17. Respondent was not familiar with compounding medications and she did no compounding of medications at TCMP. The procedure at TCMP was that a pharmacist would compound medications and call the doctor and the patient. During those two weeks, respondent called patients a few times. One patient she called stated that he was not aware of the prescription. Respondent called the prescribing physician, Dr. Caudwell, who confirmed that she had written the prescription and that the patient had probably forgotten. Respondent looked at "less than 10" prescriptions because there were three other pharmacists working at the time. Each prescription had a full profile/diagnosis attached to the prescription. The other pharmacists were verifying and each put their signatures on the prescriptions. They did make calls. She believed that they were doing their due diligence.

When respondent questioned Mr. Le about the pre-checked prescription pads, he led her to believe that these were common in compounding pharmacies. He explained that the pre-checked prescription pads were necessary due to the complexity of the formulas and because of the very limited number of formulas available to the physicians. She noticed several prescriptions, written for different patients, but where the same formulas were "checked off" by the same physician. Mr. Le's explanation that this was common due to the limited number of formulas available seemed reasonable to her at the time because in a hospital setting, there were days when she checked off 200 IV bags of the same medication, for different patients.

Compounding medications was different than what she was used to in a hospital setting, where she only dealt with IVs and verified prescriptions. The doctors submitted paperwork, she confirmed the drug interactions and suggested dosages.

She never saw “tablets.” Nurses used Pyxis.³ Once approved by the pharmacists, all medications were stored in a computer-operated cabinet in the hospital.

18. From 2015 through 2018 she knew that Mr. Le was under investigation. She went with him to see his attorney. She did have an attorney but she had no idea that she could possibly be arrested. In June 2018, federal agents arrived and arrested her and Mr. Le. She was taken to federal prison and released later that same day. She was shocked, afraid, and worried about her daughter. She suffered from depression. She had a lot of questions. At the time, she did not know about the money Mr. Le received. She now feels that he took advantage of her. She trusted him completely. He used her good name on the TCMP lease and to purchase assets.

The relationship between respondent and Mr. Le “deteriorated quickly,” and he divorced her. She could not fathom filing for or getting a divorce because “my oath was until death do us part.” Because of Mr. Le’s criminal involvement she left her job at the hospital in 2017 to protect her daughter and her hospital’s reputation.

19. In reviewing the indictment, respondent said MHP is the North Carolina pharmacy that Mr. Le acquired during the two weeks he was gone. She was not affiliated with MHP. Respondent had nothing to do with TRICARE and did not know what TRICARE was at that time. It was only after the criminal investigation that she became aware of the dollar amount of reimbursements that were received from TRICARE. She was not aware of any agreements between TCMP and others until the indictment. She does not know Robert Paduano or Thomas Powers, identified in the indictment as “co-schemers.” At Mr. Le’s direction, she dropped off a pre-printed

³ Pyxis is a computerized medication dispensing system.

prescription pad to Anthony Paduano in Costa Mesa. Mr. Le said that marketers hand these pre-printed prescription pads to the doctors for their signatures. She was led to believe, logically, that the doctors would also fill out the prescriptions.

Because respondent's name was on the TCMP lease, an account was opened for TCMP at Bank of America in both her and Mr. Le's names. She was charged with four counts in the indictment relating to financial transactions to and from this Bank of America account. She made none of these transactions and was not aware of these transactions until after discovery in this matter. She had no idea that fraud was conducted until the facts started to come out while Mr. Le was being investigated. She confronted Mr. Le and he disclosed that he was being investigated for kick-backs and these could be payments to marketers. When she learned of kick-backs, she knew this was illegal.

Respondent was not contacted until after the indictment. She wished she had the chance to tell her side or to answer questions. She had no idea she would be charged in this matter, partly because she was not previously aware and had never been involved. She felt betrayed and used because Mr. Le knew that she was not involved. He was only looking out for himself. She was upset that he exposed them to the possibility that they both would be in prison, leaving their daughter alone. On June 26, 2021, she pled to one count of health care fraud. She was ordered to pay restitution of \$7,693,701 for claims made to TRICARE and AMPLAN. Since September 2022, she has paid over \$2 million plus 10 percent of her net income toward restitution; she continues to pay 10 percent of her net income. When respondent went to her sentencing hearing, she was aware that the government was seeking a long prison term. The prosecutor recommending supervised release. She said, "The prosecutor came to my defense and understanding." The prosecutor told the judge

that he was aware that this was a deviation from the sentencing guidelines. At the end of the sentencing, the prosecutor and respondent exchanged hugs and he said to her, "Live a well life. You deserve to live a better life."

20. In October 2022, she was retained by Metti FDA as an independent project manager. Mr. Nguyen was her supervisor and he was aware of her plea agreement. He recommended her to the board of directors, and in June 2023, she became COO. In this position she oversees several projects assisting other companies to be in compliance with regulations. She is currently in charge of four contracts/projects. One of these is construction of a drug manufacturing building in Vietnam. This project is estimated to take three years to complete. It will require a lot of time for her to be in Vietnam. She has approval from the probation department but she is waiting for the judge's approval.

Respondent stated that her position at Metti FDA does not require that she have a license, however when an FDA inspector conducts an inspection, she is required to have a license. If she cannot sign as the licensed pharmacist, the project falls apart. Her license is related to the clinical component. Respondent currently trains Vietnamese pharmacists monthly and she is required to have a doctorate in pharmacy to do this training.

Respondent has discussed with her supervisors what would happen in the event she lost her pharmacist license, and she was told she would be terminated. The executive board would be "okay" if she were on probation, as long as she remains licensed. However the company could lose the Vietnam contract. If respondent were to lose her job at Metti FDA, this would impair her ability to support herself and to pay restitution.

21. Respondent said that community service is important to her because “that is who I am. I serve.” Her community service activities include: From 2000 through 2018, she volunteered with Medical Missions, traveling to third world countries to improve medical and dental care; starting in 2020 with the COVID-19 pandemic, she organized sending PPE to Vietnam and distributing PPE in her community; every Monday evening, from 2010 through 2018, she hosted a program on Saigon TV discussing childhood trauma and raising awareness about mental health issues; in 2020, she took classes in psychology and became a life coach, and for three hours each Saturday she leads an adult and youth group discussing family and relationships issues, and meets with members one-on-one when needed; she facilitates a monthly Vietnamese hiking group; and for the past five years she has been maintaining and facilitating meditation retreats.

22. The incident left her terrified. She could no longer participate in Saigon TV, her marriage ended, and she suffered a financial crisis. Every part of her life was collapsing and she was suicidal. Respondent spent three years attending meditation retreats. She began psychotherapy before sentencing and continued until recently. Respondent provided a December 2021 letter from a licensed psychologist. After a psychological evaluation she was diagnosed with borderline personality disorder and dependency personality disorder. Respondent grew up to be obedient, it is part of her culture. She does not question authority. This was a result of her fear of being abandoned.

Her life is better now. She learned about herself, she is respected as a professional, she is involved in her community, and people reach out to her with their mental health issues. She learned to separate her emotional and work-related issues.

She has learned to say, "No" if she feels uncomfortable or something is not in line with her morality or job description.

23. On cross-examination, respondent agreed that good judgment, honesty and putting a patient first are vital characteristics of a pharmacist. She agreed that she was taught about compounding medications in pharmacy school.

She checked patient information - date of birth, allergies, no interactions, for prescriptions she verified at TCMP. She was suspicious that the same doctor prescribed the same medication for several patients and that there was no data on what the patients had taken over time. She asked Mr. Le about this. She was suspicious because one patient said he was not taking this medication. She called probably 2 to 3 patients out of 10 prescriptions she reviewed. She was asked if she did her due diligence while at TCMP. She responded that the 10 prescriptions had full profiles and a diagnosis, attached to the prescription.

She stated that she and Mr. Le had three homes before 2015, one for themselves, one for Mr. Le's parents, and one for respondent's parents. During this time she was not aware of Mr. Le's illegal activities prior to 2015.

She was asked why a marketing person would need a personal prescription pad. She said compounded medications have limited formulas so the list on the pads made it easier for the doctors. In the past, she had seen doctors with their own stamp and a check list for convenience so she did not think this was odd. It is the job of pharmacy technicians to make phone calls for each prescription that is mailed out. The other pharmacists at TCMP did make calls and they documented that they were verifying information by putting put their signature on the prescriptions.

24. In her current job, she assists factories in Vietnam and other countries to manufacture medications that can be sold in the United States. She collects information such as names of partners, what drugs are manufactured, and whether these drugs are equivalent to what the FDA has approved. The government relies on this information but they do audits and inspections. Respondent does not produce these documents but she puts the documents together and submits a package to the FDA. She does not verify or sign any of the documents that are being sent.

She is aware that her boss, Mr. Nguyen, said he would try to keep her if she no longer had a license, but Metti FDA's makes the decision. Metti FDA's board hired her with the information they had but they did not know there was a chance that her license may be revoked.

25. The board should let her keep her license because she "protects" herself from all insurance information. She cannot work as a floater because she is forbidden to work with a pharmacy that has government contracts. She agreed not to work in a retail setting. This was part of her plea agreement and she would never violate that agreement.

Respondent wants the board to know that she takes full responsibility for her actions. She committed a crime and is prepared to accept the consequences. There were things she should have known that she did not know. Respondent makes sure that none of her work has anything to do with patients or health insurance. She will never expose herself to that again. She will only deal with projects and equipment. She was fortunate to find a job that allows her to use her professional skills but does not present a chance to commit the crime that she committed. Respondent asked that the board reconsider its decision to revoke her license. She said, "My license is who I am."

CHARACTER REFERENCE LETTERS

26. Respondent provided various character reference letters. All authors spoke of respondent's charity work and the assistance she provides to the Vietnamese community. Tommy Nguyen, a real estate broker, is respondent's uncle and he has known her for about 21 years. He described her as honest and ethical, with a "big heart." He is aware that she is in "some type of trouble" and he asked that she be given leniency. Lien Nguyen has been a friend of respondent for more than six years. He is aware of what occurred and of her guilty plea. He wrote that respondent has a reputation for "honesty and decency." Stephanie Mehring, a life coach who worked with respondent from December 2019 through February 2021, said respondent "shared her struggles." She described respondent as intelligent and compassionate.

Three friends who have known respondent from three to six years wrote that she is a good person, caring and compassionate, and a "valuable member of society." None of these authors referenced respondent's conviction so the letters are of limited worth.

Costs of Prosecution

27. 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 \$3,890.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (Evid. Code, § 115.) 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.)

2. The standard of proof in an administrative proceeding seeking to suspend or revoke a professional license is "clear and convincing evidence" to a reasonable certainty. (*Ettinger, supra*, at p. 856.) Clear and convincing evidence is evidence that is so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Law

3. 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.

4. Business and Professions Code section 490, subdivision (a) states that 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.

5. 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.

6. 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.

7. California Code of Regulations, title 16, section 1769, subdivision (c), states in part that when considering the suspension or revocation of a license on the grounds that a licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation, the nature and gravity of the acts; total criminal record; time passed since the act; compliance with terms of sentence; and cooperation with the board and other rehabilitation evidence.

8. 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.

[¶] . . . [¶]

Respondent's Affirmative Defenses

9. Respondent asserted as affirmative defenses: (a) that the Accusation does not allege acts or omissions upon which the agency may proceed; (b) that the

Accusation is so indefinite and uncertain that respondent was unable to prepare a defense to the allegations; (c) that each cause for discipline alleged is barred by the doctrine of laches; and (d) that each cause for discipline alleged is barred by the doctrines of waiver, estoppel, and consent. Respondent presented no evidence in support of these affirmative defenses and each of these defenses is, accordingly, rejected.

Respondent asserted two additional affirmative defenses: (e) that she did not act willfully or with reckless disregard as to whether her conduct violated California laws, but rather she acted in good faith; and (f) that if she did commit any wrongful or unlawful conduct, although such is not admitted, she has properly mitigated all alleged damage such that the discipline alleged is not warranted. These defenses are also rejected as respondent's conviction is the basis for discipline.

Cause for Discipline of Respondent's License

10. Complainant established by clear and convincing evidence that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered pharmacist. Respondent signed a plea agreement and was convicted of health care fraud on August 22, 2022. This is a crime that, at least in respondent's case, involved poor judgement. While respondent genuinely seemed unaware that what she was doing was illegal and part of a scheme to defraud, the conviction stands for itself. Cause therefore exists to impose discipline against respondent's license based on Business and Professions Code sections 490 and 4301, subdivision (l).

11. Complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct when she engaged in acts of moral

turpitude and therefore subjected her license to disciplinary action under Business and Professions Code section 4301, subdivision (f).

The Board's Disciplinary Guidelines

12. 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 that pharmacy law identifies offenses for which the board may take disciplinary action against the license. These offenses include violations of 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). The guidelines stated that the descriptions and examples are representative and are not intended to be comprehensive or exclusive. Respondent's conduct does not fit into any of these categories.

13. Respondent has paid more than \$2 million in restitution and continues to pay 10 percent of her salary. Although she was unaware that what she was doing was illegal, her acts posed potential harm to the patients of the "less than 10" prescriptions she reviewed. Respondent has no prior disciplinary record or prior warnings. Respondent's acts occurred over two weeks during an unlawful scheme that extended almost two years. Respondent spent one day in prison and three years' supervised release that she will complete on March 31, 2024.

Disposition

14. Respondent acknowledged that it is vital and expected by the public that a pharmacist is trustworthy, uses good judgment, and puts patients first. Respondent's conviction was recent and she remains on supervised release through March 31, 2024. She stated that when she was working at TCMP while Mr. Le was out of town, she was not aware that she was the PIC. As a licensed pharmacist, respondent should have known that every pharmacy is required to have a PIC who is responsible for the day-to-day operations. (Bus. Prof. Code § 4054.) This is true for retail, compounding, and hospital pharmacies. It is difficult to believe that respondent worked in the pharmacy for two weeks without knowing who was in charge. Ideally, Mr. Le could have told her that she would be the PIC and pointed out that she was signing an agreement to be the PIC, but he did not do so. Respondent is personally responsible for reading and understanding a document prior to signing.

15. Even if respondent had been aware that she was the PIC, this would not have necessarily been a red flag that the prescriptions she was reviewing were part of a fraudulent scheme. This is especially true because she called Mr. Le when she had questions. She called a few patients to confirm that a medication had been prescribed to them. When a patient stated that he had not been prescribed a medication, she called his physician who confirmed that she had written the prescription for the patient and he may have forgotten. Respondent explained why she did not think it was odd to deliver a pre-printed prescription pad to Anthony Paduano. There were limited compounding formulas and this made it easier for the doctors, and she had seen other doctors with some type of pre-printed prescription pads. More importantly, she was told that a doctor would be signing the prescription, and it was reasonable for her to believe that the doctor would also be writing the prescription.

16. Respondent had a traumatic childhood. As part of her culture she learned to be obedient. She did not question authority. Her husband did not confide in her regarding financial matters. Rather, he made financial decisions on his own. Respondent's childhood does not excuse her conduct but enforces her assertion that she did not intend to deceive or defraud. Respondent's testimony in this regard was credible and forthright.

17. Respondent provided substantial and compelling evidence of mitigating circumstances. Respondent's conduct was restricted to a narrow period of time. This was a two-week period in mid-April to May 1, 2015, during a scheme masterminded by Mr. Le and others that ran from March 2015 to about December 2016. The short time span lends credibility to respondent's assertion that she did not believe what she was doing was illegal. Respondent was trying to do her job to the best of her ability and relied to her detriment on Mr. Le's assurances. She delivered one prescription pad to Anthony Paduano at the request of her husband. When she was told the prescriptions were to be signed by doctors; she was led to the logical belief that doctors would also write the prescriptions. She did not knowingly submit false and fraudulent claims for reimbursement for prescriptions.

18. Respondent has taken full responsibility for her actions and conviction. Her role in the scheme was one of negligence rather than an intent to defraud. She acknowledged that she did not know things that she should have known. Respondent trusted her then husband completely, to her detriment.

19. Respondent reviewed less than ten prescriptions. She reviewed prescriptions when she was asked to do so. She called patients a few times. When a patient stated that he had no such prescription; his physician confirmed that she had written the prescription. The other three pharmacists made calls and put their

signatures on prescriptions. She believed they were doing their due diligence. When respondent noticed that several prescriptions were signed by the same doctor, she called Mr. Le, who led her to believe that this was common practice in a compounding pharmacy.

20. Respondent is a well-respected and knowledgeable pharmacist, who has been relied upon as a preceptor for other pharmacists. Mr. Nguyen was aware of her conviction but recommended her for an executive position at Metti FDA. He said she is an asset to his company and if she should lose her license, he would try to convince Metti FDA's board not to let her go. She has no prior discipline. She volunteers and is extensively involved in the Vietnamese community. She is not a threat to the public. 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. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Respondent is not a dishonest, immoral, disreputable or incompetent practitioner. Respondent's testimony was sincere and persuasive.

21. In August 2022, respondent entered a plea agreement. In addition to payment of restitution, she was ordered to serve only one day in prison followed by supervised release and she was ordered to pay \$100 in court fees. At her criminal sentencing, the prosecutor's recommendation for supervised release was a deviation from the guidelines. Respondent and the prosecutor hugged and he said she deserved a better life. Under these unique circumstances, revocation or suspension would be unduly harsh. A public reproof is appropriate.

22. A public reproof is not a free pass. It constitutes the board's formal criticism and censure of respondent. It reminds her that the same or similar

misconduct will not be tolerated and likely will result in a far more serious sanction. While issuing a public reproof is not a measure of discipline that falls squarely within the disciplinary guidelines, it is the most appropriate sanction under the circumstances.

Costs of Enforcement

23. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "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." "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 \$3,890.

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 her position; respondent raised a colorable challenge to the proposed discipline; respondent has the financial ability to pay costs if she keeps working; and the scope of the investigation was appropriate in light of the alleged misconduct.

26. Respondent shall pay \$3,890 to the board.

ORDER

1. It is hereby ordered that a public reproof be issued against licensee Chau Nguyen; aka Cindy Le RPH 7362.

2. Respondent is required to report this public reproof as a disciplinary action.

3. Respondent is ordered to pay \$3,890 to the board within 30 days of the effective date of the decision and order in this case.

DATE: September 7, 2023

Marion Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRAIG S. MENCHIN
Deputy Attorney General
4 State Bar No. 286124
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9437
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:	Case No. 7362
14 CHAU NGUYEN; AKA CINDY LE	ACCUSATION
15 1141 Melia Place	
16 Placentia, CA 92870	
17 Pharmacist License No. RPH 59631	
18 Respondent.	

19 **PARTIES**

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

22 2. On or about June 12, 2007, the Board issued Pharmacist License Number RPH 59631
23 to Cindy Le (Respondent). The Pharmacist License was in full force and effect at all times
24 relevant to the charges brought herein, and expired on September 30, 2022. It has not been
25 renewed.

26 //

27 //

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.

14 **STATUTORY PROVISIONS**

15 6. Code section 482 states:

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

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

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

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

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

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

26

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

28 7. Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a
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.

...

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

19

20 REGULATORY PROVISIONS

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

22 Suspension or revocation of a license.

23 When considering the suspension or revocation of a facility or a personal license
24 on the ground that the licensee has been convicted of a crime, the board will consider
25 whether the licensee made a showing of rehabilitation and is presently fit for a license,
26 if the licensee completed the criminal sentence at issue without a violation of parole or
27 probation. In making this determination, the board will consider the criteria in
28 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.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

(a) For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation that may be performed under the license type sought or held 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 required under subdivision (a) for a crime, 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 that may be performed under the license type sought or held.

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

///

1 **FACTUAL BACKGROUND**

2 13. At all relevant times, Respondent was licensed as a pharmacist in Southern
3 California. Respondent is a co-operator of TC Medical Pharmacy (“TCMP”) located in Corona,
4 California; and the beneficial owner of numerous bank and financial institution accounts,
5 including accounts held or operated by co-defendants involved in the criminal matter, as more
6 fully set forth, below.

7 **United States District Court, Central District, Case No. 8:18-cr-00119-RGK-2**

8 14. On or about August 22, 2022, in a criminal proceeding entitled *United States of*
9 *America v. Chau Nguyen, aka “Cindy Le,” et al.*, United States District Court, Southern District
10 of California, Case Number 8:18-cr-00119-RGK-2, Respondent pled guilty and was convicted of
11 Health Care Fraud (18 U.S.C. § 1347). Additional counts of Conspiracy to Commit Health Care
12 Fraud (18 U.S.C. § 1349) and Money Laundering (18 U.S.C. § 1956(a)(1)(B)(i)) were dismissed
13 pursuant to a plea agreement. Respondent was sentenced to one day in prison, 12 months of
14 home detention, and ordered to pay a \$100 court assessment, and restitution in the amount of
15 \$7,693,701.00. Upon release from prison, Respondent is subject to supervised release for three
16 years, under certain terms and conditions.

17 *Factual Basis For the Plea*

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

22 16. In order to carry out the scheme, Respondent admitted to the following conduct as
23 alleged in the Indictment:

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

1 b. After obtaining beneficiaries’ personal and insurance information, marketers
2 used the form provided by Respondent to designate prescriptions to beneficiaries that such
3 marketers selected as appropriate, despite having no health care training, and which would
4 maximize TRICARE reimbursements and, in turn, the amount of kickbacks they would
5 receive under their agreement with TCMP. Marketers then caused the authorized
6 prescriptions to be sent to TCMP and MHP for fulfillment.

7 c. Respondent knowingly submitted false and fraudulent claims for
8 reimbursement for prescriptions to TRICARE and AMPLAN.

9 17. Throughout the course of the scheme, Respondent, along with others, through
10 companies TCMP and MHP, unlawfully submitted approximately 848 claims and fraudulently
11 billed insurers a total of approximately \$41,910,176.00.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(August 22, 2022 Criminal Convictions for Health Care Fraud)**

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

19 **SECOND CAUSE FOR DISCIPLINE**

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

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

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 59631, issued to Respondent Chau Nguyen; aka Cindy Le;
2. Ordering Respondent Cindy Le 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: 1/19/2023

Sodergren,
Anne@DCA
ANNE SODERGRÉN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

Digitally signed by
Sodergren, Anne@DCA
Date: 2023.01.19 08:20:36
-08'00'

SD2022800148/83714816.docx