

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

**In the Matter of the Accusation Against:**

**JOHN PHUONG NGUYEN VU, Respondent**

**Intern Pharmacist Registration No. INT 47927**

**Agency Case No. 7404**

**OAH No. 2023030536**

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

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

It is so ORDERED on September 5, 2023.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.  
Board President

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**Case No. 7404**

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**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 6, 2023.

Agustin Lopez, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Seth Weinstein, Attorney at Law, represented respondent John Phuong Nguyen Vu.

Evidence was received, the record closed, and the matter submitted for decision on July 6, 2023.

## **SUMMARY**

Complainant proved by clear and convincing evidence that respondent's intern pharmacist registration is subject to discipline because of his felony conviction for Grand Theft and Attempted Grand Theft related to his scheme to forge checks, for which respondent is presently on criminal probation. Respondent failed to present sufficient evidence that he is rehabilitated to warrant a disposition less than revocation consistent with the need for public protection. Reasonable costs are assessed.

## **PROTECTIVE AND SEALING ORDER**

Exhibits B, F and J contain private information and are ordered sealed. This sealing order governs the release of these documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the document subject to this order, provided it is protected from release to the public.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. On June 7, 2021, the Board issued Intern Pharmacist Registration Number INT 47927 to respondent. The Intern Pharmacist Registration will expire on May 31, 2024, unless renewed.

2. On February 15, 2023, complainant signed and filed an accusation against respondent. Complainant alleges three causes to discipline respondent's

registration in the accusation: (1) conviction of a substantially related crime; (2) engaging in a crime of moral turpitude involving dishonesty, fraud, deceit or corruption, and (3) knowingly making a false document. Complainant seeks revocation of respondent's intern registration and an award of complainant's reasonable investigation and enforcement costs. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing, and this hearing followed.

## **Complainant's Evidence**

### **CRIMINAL CONVICTION**

3. On September 6, 2022, in a proceeding entitled *People v. John Nguyen Vu*, in Los Angeles County Superior Court, Case No. NA105749, respondent was convicted on his plea of nolo contendere of two felony counts of violating Penal Code sections 487, subdivision (a), grand theft, and 664/487, subdivision (a), attempted grand theft. On December 9, 2022, the court sentenced respondent to two years' formal probation and restitution in the amount of \$6,639.70. Respondent is currently under criminal probation. He has complied with the terms of conditions of probation including making restitution.<sup>1</sup>

4. The facts and circumstances of his conviction are recorded in a Long Beach Police Department report which was received as evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.

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<sup>1</sup> Respondent's prosecution was delayed due to his failure to make an initial court appearance. A bench warrant was issued for his arrest as a result. No conclusion is drawn from his failure to make his initial court appearance.

As documented in this report, Long Beach police arrested respondent on March 22, 2016, for identity theft. Respondent with the co-defendant and respondent's boyfriend had attempted to cash forged cashier's checks in the amounts of \$4,000, and \$1,200 at a bank branch inside a Ralph's supermarket in Long Beach. The bank manager at this bank branch called police after respondent's co-defendant tried to cash one of the checks. A teller suspected the check was fraudulent, and the owner of the \$4,000 check was contacted. The owner told the teller the checks were stolen from his car. Earlier, respondent had tried to cash the \$1,200 check, which was written in Spanish. The owner of the \$1,200 check was not able to be contacted. The teller identified respondent through identification respondent gave the teller as he tried to cash the checks. Respondent left the Ralph's store when the teller refused to cash the check. The responding officers found respondent and the co-defendant together in a car outside the Ralph's store. During an inventory search pursuant to the arrest, one of the officers found three credit cards and a check belonging to someone else in respondent's phone case. Respondent admitted during the hearing in this matter that he and his then boyfriend were involved in a complex scheme to cash forged checks, and police found in respondent's apartment identity documents of at least twenty people.

## **Respondent's Evidence**

5. Respondent testified at the hearing and called the following persons as character witnesses: Transon Nguyen, D.Pharm, Tuan La, D.Pharm, Grant Lackey, D.Pharm, Jennifer Nguyen, and Andrea Saich. In addition, respondent submitted affidavits from the following individuals, which were received as administrative hearsay: Han Dang, D. Pharm, April Duong, Khanh Luong, Jenny Nguyen, Thanh Tran, D.O., Michael Vu, and Gon Vu.

6. In addition to these materials, respondent submitted a declaration from Lanikai Clouse, Psy.D., a psychologist, who evaluated respondent on June 23, 2023, to determine respondent's physiological fitness in order to maintain his professional license. Dr. Clouse did not testify, and her report was admitted as administrative hearsay.

7. Respondent also submitted reports prepared by two clinicians, Shannon Curry, Psy.D., MSCP, and Kory Knapke, M.D., a clinical and forensic psychiatrist. Dr. Curry and Dr. Knapke evaluated respondent for the criminal court to evaluate respondent's eligibility for Mental Health Diversion pursuant to Penal Code 1001.36.<sup>2</sup> Drs. Curry and Knapke reviewed relevant information regarding respondent's mental state and criminal conduct, interviewed respondent, and submitted their reports to the court. Their reports are only considered to the extent they document respondent's drug abuse history and treatment, and his efforts to rehabilitate himself.

### **RESPONDENT'S TESTIMONY**

8. Respondent's testimony is summarized as follows:

While the criminal charges were pending in June 2020, respondent went to school to become a pharmacist. He received his degree as a Doctor of Pharmacy in June 2023. From June 2021 to May 2022, respondent worked as a pharmacy intern. Between November 2022 and May 2023, he obtained advanced pharmacy practice

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<sup>2</sup> Penal Code section 1001.36 permits a court in its discretion to grant pre-trial diversion to a defendant with a mental health disorder which was a significant factor in the commission of the charged offense. (Penal Code, § 1001.36, subd. (b).)

experience at different pharmacies and facilities. Respondent also obtained introductory pharmacy practice experience at various pharmacies.

9. Respondent said he began using methamphetamine in 2014 and stated that his use of methamphetamine fueled the criminal scheme of identity theft and check forging that he engaged in with his then boyfriend. Respondent stated he has been sober since October 6, 2019, and has participated in Crystal Meth Anonymous (CMA), though he does not have a sponsor. He did not detail his participation in the support group except to reference he attended a CMA support group the weekend before the hearing. He said he had a sponsor years ago. Respondent further said, between 2010 and October 6, 2019, he had multiple relapses and tried rehabilitation before 2014.<sup>3</sup>

10. Respondent stated he engaged in this criminal activity between November 2015 and continued to engage in it until August 2016, even after his arrest on March 22, 2016. He said there were 20 victims of his criminal behavior. He admitted he continued to engage in the criminal scheme to “fuel” his drug habit.

At the time respondent became involved in the criminal scheme, he was not working. To pay for his drug habit, he became involved in his then boyfriend’s criminal

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<sup>3</sup> Regarding the timeline of his use of methamphetamine, Dr. Curry in her report for the criminal court wrote that respondent began using methamphetamine in 2012 and was in a treatment program, Twin Town Treatment Center, and admitted to the program’s partial hospitalization program. Respondent left the program against medical advice on August 28, 2012. His discharge diagnosis was Methamphetamine Dependence.

identify theft scheme. The record documents that their criminal scheme was complex and calculated and, as respondent admitted, involved about 20 victims. As respondent described the scheme, he and his then boyfriend stole their personal profiles and extracted cash from the victims.

11. Respondent testified he stopped using drugs in 2019. After his arrest in 2016, respondent said he was only using the drugs “recreationally” during sex. He said he stopped using drugs completely in 2019 because he had an epiphany that his drug use wasn’t worth doing anymore, and he wanted to go on with his life. This recognition led him to go to pharmacy school. Respondent appears to have remained sober since that time. He has incurred about \$300,000 in student loans for pharmacy school and stated he cannot repay this amount if he is not working as a pharmacist.

12. Respondent attributes his use of methamphetamine to a change in life circumstances due to his coming to terms with his sexuality and coming out as gay to his family. He found this very difficult, and his parents had difficulty accepting him as gay. His relationship with them deteriorated, and he had trouble coping with the deterioration of that relationship. Respondent didn’t have coping mechanisms, and to cope with this situation, he started using drugs in 2014. He first used cocaine and then methamphetamine. He said he used cocaine recreationally. Respondent was using methamphetamine daily.

13. Despite the severity of his substance abuse problem, respondent has not been in sustained treatment for the condition, as documented in Dr. Curry’s report, which is discussed further below. Respondent in his testimony did not emphasize treatment he underwent to aid in his recovery.



14. Respondent testified he now takes responsibility for his conduct and doesn't blame his then boyfriend for it. His acceptance of responsibility is recent. At his interview with respondent on March 28, 2022, Dr. Knapke wrote that respondent "blamed everything on the co-defendant."

15. Except with passing references, respondent did not identify any outpatient or inpatient treatment, or therapy, he has undergone regarding his Stimulant Abuse Disorder and recovery. Respondent also did not present evidence, except in passing references as noted above, he has participated in any support group. His testimony regarding his participation in the CMA group was vague. It is noted that Drs. Knapke, Curry and Clouse in their reports all stated he would benefit from individual therapy, but respondent did not present evidence that he has participated in such therapy.

16. Respondent stated he would be willing to comply with any terms and conditions of probation the Board would impose.

#### **REPORTS FROM DRs. CURRY AND KNAPKE**

17. As mentioned, Drs. Curry and Knapke evaluated respondent for the criminal court for purposes of assessing whether he was eligible for mental health diversion. Respondent submitted their reports into the record, and they are considered only to the extent they detail respondent's diagnoses regarding his substance abuse, his treatment history, and efforts to rehabilitate himself.

At the time respondent was charged with the offense, Drs. Curry and Knapke noted in their reports that respondent suffered from Stimulant Abuse Disorder, Severe. Dr. Curry diagnosed him with Stimulant Abuse Disorder, Severe, in sustained remission, at the time of her evaluation of him in November 2021.

Dr. Curry, in her report, documents that respondent attended intermittent therapy and psychiatry for medication management since 2016. Respondent was attending therapy at least once a month from the Los Angeles County Department of Mental Health Adult Clinic (LAC DMH). Respondent's therapist, Thu Yang, LCSW, told Dr. Curry that respondent continued to experience severe depressive episodes that were poorly managed due to his decision to discontinue antidepressant medication after only a brief year, and inconsistency with therapy attendance. His diagnosis at LAC DMH included Post Traumatic Stress Disorder caused by intimate partner abuse, Major Depressive Disorder, with Recurrent Severe Symptoms, and Methamphetamine Dependence, in remission.

Dr. Curry, in addition, documents in her report, as mentioned above, that respondent was in a treatment program, Twin Town Treatment Center, in 2012 and admitted to the program's partial hospitalization program. Respondent left the program against medical advice on August 28, 2012. His discharge diagnosis was Methamphetamine Dependence.

18. As also mentioned above, in his report, Dr. Knapke states that respondent blamed his criminal conduct on his former boyfriend.

19. In their reports, Drs. Curry and Knapke acknowledge respondent's efforts to get past his drug abuse and criminal behavior, and accept that he has been sober since 2019. Dr. Knapke states that he believes respondent has turned his life around and is doing much better, and respondent "can be safely managed" in the community. He also states that respondent would benefit from individual therapy, as noted above. Dr. Curry comments that due to respondent's struggles with mental health issues, he would benefit from a structured outpatient program where he would be accountable for his attendance, in addition to individual therapy.

## **DR. CLOUSE'S AFFIDAVIT**

20. Dr. Clouse, in her affidavit, which as noted, was received as administrative hearsay pursuant to Government Code section 11513, subdivision (d), evaluated respondent on June 23, 2023, at the request of respondent's attorney, to assess his overall functioning. Dr. Clouse asks that respondent "be considered for licensure." She does not believe respondent poses "a risk to himself or the public for purposes of providing pharmacy services." Because Dr. Clouse did not testify and her report is only considered to the extent the information in her report supplements or explains evidence in the record, her opinion regarding the risk he may pose is not considered. (Gov. Code, § 11513, subd. (d).)

21. Dr. Clouse, in her affidavit, states that respondent has remained sober since 2019, and he takes responsibility for his criminal conduct. She describes respondent as "a sober man who has made efforts to rehabilitate his life." Dr. Clouse, does not, however, identify these efforts. Indeed, Dr. Clouse appears to have an incomplete picture of respondent's rehabilitation efforts. She notes that in 2014 respondent attended inpatient treatment at Twin Town. But respondent left this program against medical advice in 2012, as Dr. Curry documents in her report. She also records in her affidavit that respondent attended at one time a 12-step group program, but she provides no further details about his participation in the support group, and when he stopped participating in the program.

22. Dr. Clouse believes respondent needs treatment. She concludes in her affidavit that respondent would benefit from "resuming individual therapy to assist in the processing of current and past difficulties and may benefit from a psychiatric consult to consider taking an anti-depressant." She adds this recommendation: "It was encouraged that [respondent] find a support group or engage with the recovery

community additional support.” Her recommendation here seems to undercut her opinion that respondent does not pose a risk to himself or to the public.

### **TESTIMONY AND LETTERS FROM CHARACTER WITNESSES**

23. Respondent called the witnesses identified above and submitted affidavits from character witnesses, which were received as administrative hearsay.

The following is a summary of the testimony of persons who testified on respondent’s behalf:

24. Dr. Nguyen has known respondent for three years and was respondent’s teacher at pharmacy school. He believes respondent is safe to practice as an intern pharmacist, and pharmacist, and respondent is rehabilitated. He described respondent as an excellent student. He does not know the details of respondent’s crimes, but he said respondent shared with him “a little bit” about his private struggles.

25. Dr. La has known respondent for 26 years, and respondent worked with him at Dr. La’s pharmacy as operations manager between 2016 and 2020. He said respondent was a very talented operations manager, and he had no concerns that respondent posed a risk to the pharmacy. Dr. La knows respondent was convicted of grand theft, but doesn’t know the details of the crimes.

26. Dr. Lackey was, like Dr. Nguyen, respondent’s teacher at pharmacy school. He was very close to respondent as his teacher and knows about his criminal behavior and personal struggles. Dr. Lackey said that respondent appears to be an upstanding individual, and he would not hesitate to hire him as a pharmacist.

27. Jennifer Nguyen is an intern pharmacist and is presently working at a pharmacy. She has known respondent for five years as a friend and worked with him at

Dr. La's pharmacy, where respondent was her supervisor. Ms. Nguyen is aware of respondent's criminal activity and his problem with narcotics. She stated she believes respondent's ex-boyfriend pushed him to do what he did, and his ex-boyfriend is the root of respondent's problem. Ms. Nguyen has seen respondent work in a clinical capacity as a pharmacist. She does not believe respondent poses a risk to the public.

28. Ms. Saich is a student at the pharmacy school respondent attended and regards respondent as her mentor at school. They have become close friends, and he has helped her study. She is aware of respondent's criminal history and narcotic use. Ms. Saich does not believe respondent poses a risk to the public as a pharmacist.

29. As noted, a number of persons submitted affidavits on respondent's behalf, which have been received as administrative hearsay. Their statements are summarized as follows:

Dr. Dang worked as an intern pharmacist and pharmacist at Dr. La's pharmacy between 2017 and 2020. Dr. Dang said he knows about respondent's felony convictions and based on his experience working with respondent, does not believe he poses a risk to the public.

Ms. Duong worked with respondent as a pharmacy technician at Dr. La's pharmacy. Respondent is her close friend, and she stated he has had a positive impact on her life. Ms. Duong is aware of respondent's criminal convictions. She wrote that respondent is remorseful for his past misconduct. Ms. Duong stated that respondent was competent, efficient, and effective at the pharmacy where they worked together. She believes respondent will be an exemplary pharmacist.

Khanh Luong is also pursuing a degree to become a pharmacist at the school respondent attended. Khanh Luong worked as a pharmacy technician at the pharmacy

where respondent worked as operations manager and has known respondent for six years. Khanh Luong now works as an intern pharmacist. Khanh Luong knows about respondent's criminal convictions, and some of his personal struggles, and does not believe respondent is a danger to himself or others.

Jenny Nguyen also worked with respondent at Dr. La's pharmacy when respondent was operations manager. She is aware of his criminal convictions and some of his personal struggles. She does not believe respondent is a danger to himself or others.

Thanh Tran, D.O. practices as an osteopathic physician in Florida. He has known respondent since middle school and has maintained contact with him over the years. Dr. Tran is aware of respondent's criminal convictions and some of his personal struggles. He does not believe respondent is a danger to himself or others.

Gon Vu is respondent's father. He knows about respondent's criminal convictions and personal struggles. He states in his affidavit he is proud of the way respondent has rehabilitated himself to get his life back on track and contribute to society. He has demonstrated integrity, ethical behavior, and has dedicated himself to providing safe and effective healthcare services.

Michael Vu is respondent's brother. He also is aware of respondent's personal struggles and his criminal conviction. He believes respondent has moved forward to get his life back on track, and he is proud of the roadmap respondent has followed to do this.

## **Parties' Arguments**

30. Complainant in closing asked that respondent's registration be revoked. Complainant argued this disposition was necessary because it is the only option to protect the public. Complainant cited respondent's failure to take responsibility for his conduct until recently and his limited efforts to rehabilitate himself from drug abuse noting that respondent does not have a sponsor, and he is currently on criminal probation.

31. Respondent stated in closing that he does not dispute he engaged in serious misconduct, but he is now a changed person, and the conduct for which he was convicted occurred seven years ago. He argued that not everyone needs a sponsor from a support group or drug rehabilitation. Respondent cited the numerous character witnesses who spoke on his behalf as proof of his rehabilitation. He stated he would accept whatever terms and conditions of probation the Board would impose to ensure public protection.

## **Costs**

32. Complainant submitted a Certification of Prosecution Costs in the amount of \$7,605 for legal work performed through July 3, 2023. This certification describes the general tasks performed, the time spent on each task, and the method of calculating the costs performed by the Deputy Attorney General, who prosecuted this matter, the Supervising Deputy Attorney General, and paralegal. The costs are found to be reasonable pursuant California Code of Regulations, title 1, section 1040.

33. Respondent has a limited ability to pay these costs based on his testimony that he is under financial strain due to the amount of student loans he has incurred from pharmacy school.

## LEGAL CONCLUSIONS

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

### **Burden and Standard of Proof**

2. Absent a statute to the contrary, the burden of proof in civil administrative disciplinary proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) Thus, complainant bears the burden of proof.

3. An issue arises regarding the standard of proof to apply to an intern pharmacist registration. In determining the proper standard of proof to apply in license disciplinary proceedings, courts have drawn a distinction between professional licenses and nonprofessional or occupational licenses. In proceedings involving a professional license, the standard of proof is clear and convincing evidence, while in disciplinary proceedings involving a nonprofessional or occupational license, the standard of proof is preponderance of the evidence. (*Lone Star Sec. & Video, Inc. v. Bur. of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.) An intern pharmacist registration can fairly be deemed a professional license for purposes of this analysis considering that an intern pharmacist can perform all the functions of a licensed pharmacist under the supervision of a licensed pharmacist. (Bus. & Prof. Code, 4115, subd. (a).) This presumes that an intern pharmacist has obtained a similar level of



professional training, education, and expertise that a licensed pharmacist has obtained. Thus, the clear and convincing burden applies in this matter.

## **Causes for Discipline**

4. Cause exists, under the First Cause for Discipline, pursuant to Business and Professions Code section 4301, subdivision (l), to impose discipline against respondent's registration.

On September 6, 2022, respondent was convicted of two felonies, grand theft and attempted grand theft. (Penal Code, § 487, subd. (a).). Complainant proved by clear and convincing evidence that respondent's crime is substantially related to the qualifications, functions, or duties of an intern pharmacist because it involved "dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information," and thus calls into question respondent's fitness to perform the duties of an intern pharmacist consistent with public protection. (Cal. Code Reg., title 16, § 1770, subds. (a) and (b)(4).) As found above, respondent stole the identities of two persons and forged their checks in the amounts of \$4,000 and \$1,200. One of these checks was stolen from the victim's car. Respondent's crime was part of a wider identity theft scheme where he forged checks. His conduct directly relates to the functions of a pharmacist whose duties involve accessing prescription, patient profile, or other relevant medical information of consumers in the furnishing, selling or dispensing of controlled and dangerous drugs. (Bus. & Prof. Code, § 4051, subds. (a) and (b)(2)).

5. Cause exists under the Second Cause for Discipline pursuant to Section 4301, subdivision (f), to impose discipline against respondent's intern pharmacist registration. Complainant proved by clear and convincing evidence that respondent

committed acts of dishonesty, fraud and deceit, when he forged and attempted to forge checks belonging to two persons whose identities he stole.

6. Cause exists under the Third Cause for Discipline pursuant to Section 4301, subdivision (g), to impose discipline against respondent's intern pharmacist registration. Complainant proved by clear and convincing evidence that respondent knowingly forged checks and represented he was entitled to be paid the money in the checks.

### **Applicable Law and Guidelines Regarding Rehabilitation, Evaluation and Disposition**

7. With causes to discipline respondent's registration found, the issue is respondent's efforts to rehabilitate himself. Respondent has the burden of proof in this regard. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.) This analysis is guided by the Board's disciplinary guidelines, applicable regulations, and court decisions. Consistent with the guidance and factors identified in these sources, the appropriate disposition consistent with public protection is revocation of respondent's intern registration. This conclusion is made for these reasons:

Respondent failed to meet his burden to show he is sufficiently rehabilitated to warrant a disposition less than revocation based on this record and consistent with the factors identified in California Code of Regulations, title 16, section 1769, and the Board's disciplinary guidelines. (Disciplinary Guidelines, Rev. 2/2017, p. 4.) These factors include the nature and severity of the acts or offenses, the total criminal record, time that has elapsed since the commission of the acts or offenses, compliance with terms of probation and restitution, and evidence of rehabilitation. (Section 1769, subd. (c)(1)-(6).)

8. Applying these factors to the evidence of record, respondent committed a serious and calculated crime to steal personal identities and forge checks. It was fueled, as respondent put it, by his abuse of methamphetamine, and his abuse of methamphetamine occurred over a significant time frame, included multiple relapses, and continued even after he was arrested in 2016. Because of the nexus between his criminal conduct and drug abuse, respondent's rehabilitation needs to be evaluated by the efforts he has made to recover from this condition. When considering an individual's rehabilitation from substance abuse, consideration must be given to the nature and extent of that abuse and its impact upon the individual. Through continued abstinence, a substance abuser may arrest the deleterious manifestations of the disease. The requisite length of time required to show meaningful and sustained rehabilitation varies from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

9. Despite respondent's troubled history of drug abuse and the criminal conduct his drug abuse fueled, he did not provide proof he has participated in a meaningful way in a recovery program, support group or groups, or therapy. During his testimony respondent only in passing referenced the treatment or therapy he has undergone and his limited participation in a support group. Clearly, considering the nature and extent of his drug abuse history, such treatment seems necessary for purposes of his rehabilitation as Drs. Curry, Knapke, and Clouse all recommended. Here, it needs to be emphasized that these three mental health professionals, who evaluated respondent, and whose reports and affidavit are part of the record, recommended he participate in therapy. Dr. Curry recommended that he attend a support group or groups. Without proof that he has a meaningful plan for recovery to maintain his sobriety, there is no assurance he will not engage in similar behavior again and, as a result, a real potential for harm to the public if he were to remain licensed as an intern pharmacist exists. His sobriety since 2019, while commendable, is

by itself insufficient. It must be noted that respondent remains on criminal probation and, thus, little weight can be given that he has not engaged in the behavior that led him to commit the crimes. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

10. Respondent's conviction, per Board's guidelines, is properly categorized under Category III on an ascending scale of recommended discipline from I to IV because respondent's felony conviction involved his use and abuse of methamphetamine.<sup>4</sup> The recommended discipline under this category ranges from a minimum penalty of probation with a 90-day suspension period and terms and conditions to revocation. For the reasons previously given, revocation is the only disposition appropriate consistent with the need for public protection considering the lack of evidence that respondent has participated, in some meaningful way, in drug treatment.

11. With this stated, it is acknowledged that numerous persons support respondent's effort to remain licensed as an intern pharmacist and become a pharmacist, and respondent has taken strides to move past his troubled personal history. A person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) But this evidence is insufficient to warrant a disposition less than revocation for the reasons stated above.

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<sup>4</sup> Complainant in closing argued that Category III is the appropriate category in this matter.

## Costs

12. The Board may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 125.3, subd. (a).) As found above, complainant incurred a total of \$7,605 in enforcement costs, which is found is reasonable.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed or reduced in the particular circumstances of each case. These factors include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of their position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Applying these factors to respondent's matter, respondent presented evidence he has a limited ability to pay costs because of student loans he is required to repay and because he is presently not working. Respondent also presented a good faith defense to this action. Accordingly, costs are reduced by 50 percent to \$3,802.50.

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## ORDER

Intern Pharmacist Registration Number INT 47927, issued to respondent John Phuong Vu is revoked. Costs are assessed at \$3,802.50. Respondent must pay these costs before his registration is reinstated.

DATE: August 3, 2023

  
Abraham M. Levy (Aug 3, 2023 12:06 PDT)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 7404

13 **JOHN PHUONG NGUYEN VU**  
13612 Iowa Street  
14 Westminster, CA 92683

15 **Intern Pharmacist Registration No. INT**  
16 **47927**

**ACCUSATION**

17 Respondent.

18  
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 7, 2021, the Board of Pharmacy issued Intern Pharmacist  
23 Registration Number INT 47927 to John Phuong Nguyen Vu (Respondent). The Intern  
24 Pharmacist Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on May 31, 2024, unless renewed.

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## **JURISDICTION**

3. Complainant brings this Accusation before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300, subdivision (a), states, "Every license issued may be suspended or revoked."

5. Section 4300.1 states:

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

## **STATUTORY PROVISIONS**

6. Section 490 provides that The Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. 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 shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

...

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



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

### 7 **REGULATORY PROVISIONS**

8 8. California Code of Regulations, title 16, section 1769, subdivision (c), provides  
9 criteria to determine rehabilitation for purposes of suspension or revocation, and states:

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

- 16 (1) Nature and gravity of the act(s) or offenses.
- 17 (2) Total criminal record.
- 18 (3) The time that has elapsed since commission of the act(s) or offenses.
- 19 (4) Whether the licensee has complied with all terms of parole, probation,  
20 restitution or any other sanctions lawfully imposed against the licensee.
- 21 (5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.
- 22 (6) Evidence, if any, of rehabilitation submitted by the licensee, including as  
23 provided in the board's Disciplinary Guidelines, identified in section 1760.

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

25 (a) For the purpose of denial, suspension, or revocation of a personal or facility  
26 license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the  
27 Business and Professions Code, a crime, professional misconduct, or act shall be  
28 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:

...

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

....

### **COST RECOVERY**

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

### **FACTUAL BACKGROUND**

11. On September 6, 2022, in a proceeding entitled *People v. John Nguyen Vu* (Super. Ct. Los Angeles County, 2021, No. NA105749) the court convicted Respondent on his plea of nolo contendere for felony violation of two counts of Penal Code section 487(a) (grand theft), and Penal Code Sections 664/487(a) (attempted grand theft). On December 9, 2022, the court sentenced Respondent to two years formal probation because he paid \$6,639.70 in restitution.<sup>1</sup>

12. The court convicted Respondent because on March 22, 2016, Long Beach Police Department (LBPD) officers arrested Respondent for identity theft. Respondent attempted to cash forged cashier's checks for \$4,000.00, and \$1,200.00 at a Wells Fargo Bank branch in Long Beach. LBPD officers found three credit cards and a social security card belonging to someone

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<sup>1</sup> Had respondent failed to pay restitution timely, the court would have sentenced Respondent to two years formal probation, but included a suspended sentence of four years and four months in state prison.

1 else in Respondent's phone case. Respondent admitted that he illegally had the identities of at  
2 least 20 people in his residence.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Substantially Related Conviction)**

5 13. Complainant incorporates paragraphs 11 to 12 by reference as if set forth in full  
6 herein.

7 14. Respondent's license is subject to discipline under Sections 490 and 4301,  
8 subdivision (l), because Respondent engaged in unprofessional conduct when the Superior Court  
9 convicted Respondent of crimes substantially related to the qualifications, functions, and duties of  
10 an intern pharmacist.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

13 15. Complainant incorporates paragraphs 11 to 12 by reference as if set forth in full  
14 herein.

15 16. Respondent's license is subject to discipline under Sections 490 and 4301,  
16 subdivision (f), for unprofessional conduct because Respondent engaged in acts of moral  
17 turpitude, dishonesty, fraud, deceit, or corruption.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Knowingly Making a False Document)**

20 17. Complainant incorporates paragraphs 11 to 12 by reference as if set forth in full  
21 herein.

22 18. Respondent's license is subject to discipline under Sections 490 and 4301,  
23 subdivision (g), because Respondent engaged in unprofessional conduct when he knowingly  
24 forged the cashier's checks that falsely represented he was entitled to be paid the money  
25 represented in the checks.

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 Intern Pharmacist Registration Number INT 47927 issued to John Phuong Nguyen Vu;
2. Ordering John Phuong Nguyen Vu 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: 2/15/2023

Sodergren,  
Anne@DCA

Digitally signed by Sodergren,  
Anne@DCA  
Date: 2023.02.15 19:02:41 -08'00'

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

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