

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

**In the Matter of the First Amended Petition to Revoke Probation
Against:**

**SO-SHEUNG FONG, Respondent
Pharmacist License No. RPH 47613**

Agency Case No. 7457

OAH No. 2023070663

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 February 12, 2025.

It is so ORDERED on January 13, 2025.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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PROPOSED DECISION

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 25, 2024, and October 21, 2024, from Sacramento, California.

Malissa N. Siemantel, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Natallia Mazina, Attorney at Law, represented respondent So-Sheung Fong, who was present at the hearing.

Evidence was received, the record closed, and the matter was submitted for decision on October 21, 2024.

FACTUAL FINDINGS

Background and Procedural History

1. On or about August 24, 1994, the Board issued to respondent Pharmacist License Number RPH 47613. Her license will expire on May 31, 2026, unless renewed or revoked.

2. On April 17, 2024, complainant signed and thereafter filed a First Amended Petition to Revoke respondent's probation. Complainant contends grounds exist to revoke respondent's probation and impose the stayed order of revocation due to respondent's failure to comply with the terms and conditions of her probation. Generally, complainant alleges respondent provided false information to the Board, failed to file timely quarterly reports, failed to report her employment to the Board, failed to notify employers of her probationary status, failed to maintain an active license, failed to meet practice requirements, failed to submit a remedial education program to the Board for approval, and failed to cooperate with Board staff.¹

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent

¹ At hearing, complainant amended the First Amended Accusation at page 7, paragraph 19, lines 7 through 9 to strike March 2022 and add June of 2020 through September of 2020, and November of 2020 through December of 2020.

adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

DISCIPLINARY HISTORY AND DISCIPLINARY ORDER

4. On August 20, 2019, complainant filed a First Amended Accusation against Oak Valley District Hospital (Oak Valley) and respondent as the Pharmacist In Charge (PIC) at Oak Valley. The Accusation alleged that while respondent worked as the PIC at Oak Valley, she had inadequate policies and procedures, inaccurate beyond use dates for compounding sterile drug preparations, no record of beyond use dates for sterile compounded drug preparations, no immediate use label for medium risk sterile compounded drug preparations, and no record of date compounded for sterile compounded drug preparations. She also failed to follow Oak Valley's written policies and procedures and to notify the Board when she ceased to act as PIC.

5. On January 27, 2020, respondent entered into a Stipulated Settlement and Disciplinary Order (Disciplinary Order) with the Board. Respondent was represented by Ms. Mazina. The Disciplinary Order was effective on April 15, 2020, after it was adopted by the Board. Respondent's license was revoked and placed on probation for three years subject to various terms and conditions. The terms and conditions that are at issue in the matter are as follows in pertinent part:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

[¶] . . . [¶]

2. Report to the Board

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

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

[¶] . . . [¶]

4. Cooperate with Board Staff

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

pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

[¶] . . . [¶]

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in First Amended Accusation No. 6597 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of Respondent's employer(s), and the name(s) and telephone number(s) of all of Respondent's direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and

authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) Respondent's direct supervisor, (b) Respondent's pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of Respondent's employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in First Amended Accusation No. 6597, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in First Amended Accusation No. 6597, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in First Amended Accusation No. 6597, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number [6597], and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a Pharmacist,

or any position for which a Pharmacist is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

[¶] . . . [¶]

10. Status of License

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

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

[¶] . . . [¶]

12. Practice Requirement-Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a Pharmacist in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month.

During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a Pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a Pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

13. **Violation of Probation**

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

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided, and the charges and allegations in First Amended Accusation No. 6597 shall be deemed true and correct.

[¶] . . . [¶]

16. Remedial Education

Within 60 days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to the grounds for discipline. During the second to the third year of probation, the program of remedial education shall consist of at least 10 hours per year of probation in pharmacy operations and law, sterile compounding, and the role of a Pharmacist-in-Charge. All of these remedial courses shall be completed at respondent's own expense. At least 50% of these hours must be in-person courses each year. All remedial courses shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes for pharmacists.

Failure to timely submit for approval or complete the approved remedial education shall be considered a violation of probation. The period of probation will be automatically extended until such remedial education is successfully completed and written proof, in a form acceptable to the board, is provided to the board or its designee.

Following the completion of each course, the board or its designee may require the respondent, at Respondent's own expense, to take an approved examination to test the

Respondent's knowledge of the course. If the Respondent does not achieve a passing score on the examination that course shall not count towards satisfaction of this term. Respondent shall take another course approved by the board in the same subject area.

Probation Violations

6. Victor Macias, Probation Analyst for the Board and Hilda Nip, Inspector for the Board, were assigned to monitor respondent's probation. Mr. Macias and Ms. Nip prepared investigation reports and correspondence concerning respondent's failure to comply with terms of her probation. Mr. Macias and Ms. Nip testified at hearing consistent with those reports and correspondence.

2020 PROBATION VIOLATIONS

7. On April 29, 2020, Mr. Macias, Supervising Inspector Joan Coyne and Ms. Nip, had a telephone conference with respondent to review the terms and conditions of her probation. During the conference, respondent was asked if she was employed as a pharmacist. Respondent explained that she had been employed through the employment agency, Soliant Health, but her contract had concluded, and she was not working as a pharmacist. Respondent was also informed of the requirements regarding submission of quarterly reports, and reporting employment. Respondent was informed her first quarterly report was due on July 10, 2020.

8. On May 7, 2020, respondent signed and submitted to Mr. Macias a declaration stating that the terms of her probation were "fully explained" to her by Board representatives. Respondent also declared that she understood the "terms and

conditions as set forth in the disciplinary action and that failure to comply may result in further disciplinary action.”

9. Respondent failed to submit a quarterly report on July 10, 2020. On July 22, 2020, Joan Coyne, Supervising Inspector for the Board, emailed a letter to respondent, regarding her failure to comply with the quarterly report condition set forth in probation condition 2. The email included a copy of the quarterly report guideline, which explained that quarterly reports were expected to be received by the Board on the 10th day of January, April, July, and October, along with the required information specified on the reports. The letter also set a deadline of August 3, 2020, for respondent to submit the overdue report.

10. On August 3, 2020, the Board received the respondent’s quarterly report dated July 30, 2020. In the report, respondent wrote that she worked an “average 128 hours at Soliant Health/Mission Bay pharmacy (13 weeks assignment: 2/18/2020 - 5/30/2020).” The information she provided contradicted her statement during the conference on April 29, 2020, when she claimed that the contract she had with Soliant Health had ended and she was not working as a pharmacist. Respondent also wrote that she attempted to find employment at multiple locations, but she did not receive any job offers. Respondent signed the quarterly report, but omitted the required penalty of perjury statements.

11. On August 5, 2020, Ms. Nip interviewed respondent on the phone. During the conversation, respondent was “argumentative, loudly yelling, and complained about being falsely accused by [an] ‘inexperienced’ inspector.” Ms. Nip explained that she “redirected [respondent] to focus on moving forward and complying with the terms of probation.” Ms. Nip reminded respondent of the quarterly report due dates. Ms. Nip also reminded respondent that she needed to fulfill the

requirement of submitting continuing education courses to the Board for prior approval, pursuant to probation condition 16 concerning remedial education. Ms. Nip discussed respondent's work status. Respondent explained that she had been unable to find work as a pharmacist despite her efforts.

12. On October 14, 2020, the Board received respondent's quarterly report which was not signed nor dated and lacked the penalty of perjury statements. Respondent did not provide any employment information but stated she was looking for work. Respondent also submitted a continuing education "Monitor Transcript" and several certificates of completion of continuing education.

2021 PROBATION VIOLATIONS

13. On January 14, 2021, the Board received respondent's quarterly report, which again lacked the penalty of perjury statements. Respondent wrote that her 13-week employment at Mission Bay Pharmacy ended on May 30, 2020. She also reported seeking employment and attending interviews at several pharmacies but stated she did not receive any job offers. Respondent also submitted a statement of continuing education credit for the Board-offered course that fulfilled probation condition 17, and another certificate of continuing education.

14. On January 19, 2021, Ms. Nip spoke to respondent on the phone. Respondent explained that she was not able to secure employment and was not working as a pharmacist. Ms. Nip asked respondent about the "employment information in her quarterly reports submitted to the Board in August 2020, October 2020, and January 2021 that contradicted her claim of unemployment during the initial conference in April 2020." Specifically, respondent wrote on the quarterly reports that she worked for the employment agency Soliant Health who assigned her to the

Mission Bay Pharmacy from February 18, 2020, until May 30, 2020. However, respondent failed to file an Employment Verification form with the Board.

Respondent stated that Soliant Health and Mission Bay Pharmacy were aware of the probation. Ms. Nip reminded respondent of the requirements set forth in probation condition 6 related to reporting employment and notice to employers. Ms. Nip explained that both the pharmacist-in-charge and the organization's representative must formally acknowledge her probationary status by completing the employment verification form.

Ms. Nip also explained to respondent that pursuant to probation condition 12, her probation was tolled because she was not working as a pharmacist. Therefore, her probation would not end on April 14, 2023, as initially scheduled. Respondent stated that she believed her probation was for two years and would end in April 2022. Respondent referred to the terms of her probation that required her last payment for the reimbursement of Board costs to be completed before April 2022. Ms. Nip explained to respondent that she was required to "pay the reimbursement in full no later than one year prior to the probation's end date of April 2023." Ms. Nip provided respondent a "comprehensive explanation of Term 12 (Practice requirement), including the specifics of the tolling period."

Ms. Nip also reminded respondent of the probation condition 16 remedial education requirement and "emphasized that the second year of probation would start soon on April 15, 2021, and highlighted the requirement to complete ten hours of remedial education per year, focusing on pharmacy operations and law, sterile compounding, and the role of a Pharmacist-in-Charge." Ms. Nip also "clarified that at least 50% of the ten hours must be obtained through in-person sessions, and

emphasized the requirement of obtaining prior approval from the Board for each CE [continuing education] course.”

Additionally, Ms. Nip asked respondent to “sign and date the quarterly report and to follow the format outlined in the quarterly report guidelines provided to her previously.” Ms. Nip informed respondent that her October quarterly report did not include her signature under the penalty of perjury statements. After the telephone call, Ms. Nip emailed respondent the quarterly report guidelines.

15. On April 19, 2021, the Board received respondent’s quarterly report, which again lacked the penalty of perjury statements. Respondent listed “new employment information, which she had not previously disclosed.” Specifically, she listed employment as a pharmacist at Vineyard Pharmacy “from 2019 to 2021 average 18 hours each week during Thanksgiving, Christmas and New Year.”

She also listed that she worked 20 to 40 hours per week at the Costco Pharmacy in Merced, California from “January 2008 to the present.” Respondent did not provide her work schedule at Costco Pharmacy in Merced. Respondent wrote that Stella Betelia was her supervisor and PIC. However, Ms. Nip later discovered that Ms. Betelia is a Costco regional manager and was not respondent’s supervisor nor the PIC at any Costco Pharmacy. Ms. Betelia also testified at hearing and confirmed her role as a regional manager for Costco.

16. On April 26 and May 6, 2021, Ms. Nip left phone messages with respondent to speak to her about the April 2021 quarterly report. Ms. Nip requested that respondent return her calls. Respondent eventually called Ms. Nip and left a message stated that she “was busy and would call me back.” However, respondent did not call.

17. On June 8, 2021, Ms. Nip called respondent again to discuss her quarterly report. Respondent "confirmed that she had worked at Vineyard Pharmacy and had been working as a pharmacist at Costco before the probation became effective." Ms. Nip asked respondent why she did not report her employment to the Board. Respondent "explained that she did not consider working at a retail pharmacy as a 'real' pharmacist job." Respondent also stated that she was "actively searching for a position as a 'real' hospital pharmacist and, therefore, did not acknowledge her current employment."

Ms. Nip explained that if her positions with Vineyard Pharmacy and Costco required a pharmacist license, then she was working as a pharmacist, "regardless of her perception of what constituted a 'real' pharmacist job." Ms. Nip "emphasized that [respondent] must adhere to all the terms of probation, including submitting the employment verification form." Respondent claimed that both the "pharmacist-in-charge and the district manager at Costco Pharmacy refused to sign the employment verification form; therefore, it was not her problem that the employment verification form was not submitted."

Ms. Nip explained that during the conversation, respondent "displayed belligerent behavior, raised her voice, yelled, and used offensive language to the extent that compelled [Ms. Nip] to conclude the discussion." Specifically, respondent yelled "fuck you" to Ms. Nip multiple times. Ms. Nip did not feel comfortable talking to respondent alone, so she informed her that Board staff would schedule a telephone conference with her on June 23, 2021.

18. On June 23, 2021, Mr. Macias, Stephanie Koenig, Board Probation Monitoring Unit Manager, James Flores, Board Inspector, and Ms. Nip held a compliance telephone conference with respondent. During the conference, they

discussed with respondent her employment at Vineyard Pharmacy and at Costco Pharmacy. Respondent confirmed she worked at Vineyard Pharmacy and that she had informed the Board of her employment. Respondent was informed that she was required to "notify the Board of her employment in writing and complete the Employment Verification form within 30 days from the effective date of the decision (Term 6), emphasizing that the Board had not received such notification from her."

Respondent stated that she "asked both the PIC and the Costco district manager to sign the form, but they refused, and therefore, she considered herself compliant, insisting that there was nothing more she could do." Respondent admitted that she still worked for Costco Pharmacy.

Ms. Nip explained that during the telephone conference, respondent "refused to engage in conversation with me, claiming difficulty in understanding [Ms. Nip] due to what she perceived as a lack of eloquence in [Ms. Nip's] speech." Ms. Nip described respondent's conduct as "constant interruptions, raising her voice, and shouting," which led to the decision to conclude the call.

19. On June 24, 2021, Supervising Inspector Coyne spoke with PIC Jeffrey Benjamin at Costco Pharmacy in Merced (Costco 142) and regional manager Ms. Betelia. They confirmed respondent was a relief pharmacist who worked two to three shifts a month and might also work at Costco in other locations, such as Turlock, Modesto, Fresno, and Stockton. Ms. Betelia also confirmed that she was not respondent's supervisor. Rather, respondent's direct supervisors were the PICs at pharmacies where she worked. PIC Benjamin also explained that respondent did not provide an employment verification form for him to sign. However, [respondent] requested a written schedule. PIC Benjamin and Ms. Betelia testified at hearing consistent with the statements they provided Ms. Coyne.

20. On July 28, 2021, the Board received respondent's quarterly report, which was late. Again, the report lacked the penalty of perjury statements. She also did not list her work schedule at Costco Pharmacy. Respondent also continued to inaccurately list Ms. Betelia as her supervisor at Costco Pharmacy in Merced.

21. On or about August 4, 2021, respondent submitted to the Board a "self-made note" signed by PIC Benjamin, stating respondent was "currently employed as limited part-time pharmacist at Costco Pharmacy."

22. On September 20, 2021, the Board mailed a letter to respondent addressing non-compliance with several terms of her probation, including violating probation condition 4 by failing to cooperate with Board staff, violating probation condition 6 by failing to submit employment verifications for Vineyard Pharmacy or Costco Pharmacy, and violating probation condition 12 because she did not practice as a pharmacist for the minimum of 80 hours per calendar month. As a result, her probation was tolled.

23. On October 21, 2021, Ms. Coyne, Ms. Koenig, Mr. Flores, Mr. Macias, and Ms. Nip held a compliance telephone conference with respondent. During the call, respondent was informed that she had violated probation condition 2 because she "failed to submit her quarterly reports in a timely manner and neglected to adhere to the quarterly report guidelines concerning the reporting of employment information, monthly hours worked, and work schedules." Respondent explained that she misunderstood the requirements for her quarterly reports to be signed by her supervisor. Respondent was again informed of the guidelines. After the call, Ms. Nip extended the deadline for respondent to submit the quarterly report to October 26, 2021.

Ms. Coyne also informed respondent that she had spoken with Ms. Betelia, who confirmed respondent's employment at other Costco locations, including Turlock, Fresno, Modesto, or Stockton, which respondent failed to report to the Board. Additionally, Ms. Coyne informed respondent that PIC Benjamin stated he never received from her an employment verification form to be signed. Ms. Coyne explained that the information contradicted respondent's statement that PIC Benjamin refused to sign the form. Respondent was again informed that the "Board-provided employment verification form must be completed by the pharmacist-in-charge at each location where she worked" as a pharmacist.

Respondent was also informed that pursuant to probation condition 12, she was required to submit her work schedule, because it is "crucial for regular contact at her workplace." Respondent was instructed to email her work schedule to Ms. Nip and "consistently and promptly notify me of any changes." She failed to do so.

The issue of respondent's failure to comply with probation condition 16 relating to remedial education, was also addressed. Respondent was informed of the "requirement of completing 10 hours of continuing education annually during the 2nd and 3rd year of probation, with at least 50% of these hours being from in-person courses each year." Respondent was reminded that the "courses needed prior approval from the Board." Respondent explained she was confused about this probation condition. Respondent explained that she "already fulfilled the Critical Point training and the Board's Prescription Diversion and Abuse training." However, respondent was informed of the "distinctions among the three separate terms." Respondent was told to "thoroughly read and understand each term's requirement as stipulated in the settlement." Additionally, "comprehensive instructions were provided on how to submit continuing education courses to the Board for approval for remedial education

in accordance with Term 16." Respondent was told that "past courses not submitted for prior approval could not be credited toward the remedial education requirement. Respondent was "strongly encouraged to promptly submit CE courses for approval."

24. On October 27, 2021, the Board received respondent's quarterly report. The report was signed by respondent "under the penalty of perjury statement affirming its accuracy; however, it lacked the penalty of perjury statement regarding compliance with all terms and conditions of probation, as stipulated in Term 2." Respondent "disclosed the numbers of hours worked per month at Costco 142 in Merced (PHY40349) from January 2021 to September 2021. However, she failed to report her employment at other Costco locations. It was later discovered [respondent] had worked at other Costco Pharmacy locations, including Turlock, Modesto, and Stockton, during this specified period."

25. On November 17, 2021, the Board received a signed employment verification form. PIC Benjamin at Costco 142 and Ms. Betelia as the company's representative both signed the form. Respondent signed and dated the form on November 2, 2021, "under penalty of perjury, attesting to the truth and accuracy of statements, answers, and representation made in the document." However, respondent "inaccurately stated on the form that the probation period was concluding on April 14, 2022, instead of the correct date, April 14, 2023."

Respondent also submitted a note regarding remedial courses which were unrelated to pharmacy operations and law, sterile compounding, and the role of a Pharmacist-in-Charge. Additionally, the courses had not been "submitted properly for prior approval."

2022 PROBATION VIOLATIONS

26. On January 7, 2022, the Board received from respondent a list of continuing education courses to satisfy probation condition 16 for remedial education. However, the Board did not approve any of these courses for remedial education.

27. On January 24, 2022, the Board received from respondent a quarterly report that was signed and dated under the penalty and perjury, affirming the truth and accuracy of the information provided. However, "the report lacked a penalty of perjury statement addressing compliance with all the terms and conditions of probation, as stipulated in Term 2." Respondent listed that she "only worked at Costco Pharmacy in Merced from October 2021 to December 2021." However, Ms. Nip later discovered that respondent also worked at Costco Pharmacy in Turlock and Manteca during this period.

28. On March 13, 2022, respondent sent an email to Mr. Macias, stating she intended to "work on Critical Point 2022 - 2023 version that purportedly contained more than 30 CE credit hours." No additional information was provided regarding whether the "courses were live or if they were home study or live webinar."

29. On March 15, 2022, Ms. Coyne, Ms. Koenig, Mr. Macias, and Ms. Nip held a compliance telephone conference with respondent. Respondent was informed of several areas of non-compliance with the terms of her probation. Respondent was informed that each "pharmacy had its own license and a different PIC, therefore requiring each PIC to acknowledge reading the decision and the imposed terms/conditions." Respondent disagreed and "insisted Costco was one employer, asserting she was not in violation of the term by failing to notify the Board of her work

at different Costco Pharmacy locations and not submitting the employment verification from those locations where she worked.”

Respondent was again informed to “submit a list of Costco pharmacies and the hours she worked from October 2021 to March 2022 by March 23, 2022.” She was also again instructed to email her work schedule that was requested during the October 21, 2021 conference call, which had not been sent. Respondent apologized and stated she would start sending her work schedule.

Respondent was also again provided instructions on submitting continuing education courses for prior approval, “emphasizing that the information provided in her email on March 13, 2022, lacked sufficient details for Board review and approval.”

30. On March 23, 2022, respondent sent Ms. Nip an email containing her work schedule for the week, specifying, “March 21 to March 24, four hours each day, without indicating the specific hours she would work.” Ms. Nip noted that this “was the first and only work schedule [respondent] had submitted to the Board.” Respondent also included attachments detailing her worked hours from October 1, 2021, to March 15, 2022. She only listed “Costco 142.” However, upon review of the documentation, Ms. Nip discovered respondent worked at locations other than Costco 142 during this period, including Turlock and Manteca.

Respondent also submitted the titles of the “Critical Point” continuing education courses. Ms. Nip explained that her “submission was not processed” because respondent failed to “adhere to the guidelines for submitting them for prior approval for remedial education.”

31. On April 14, 2022, the Board received from respondent a quarterly report, which was signed and dated under penalty and perjury, affirming the truth and

accuracy of the information provided. However, "the report lacked a penalty of perjury statement regarding compliance with all the terms and conditions of probation, as stipulated in Term 2." Respondent "reported only working at Costco Pharmacy in Merced from January 2022 to March 2022." Ms. Nip later discovered that respondent "had also worked at Costco Pharmacy in Turlock during this period."

32. On June 6, 2022, Mr. Macias emailed and mailed a letter to respondent, addressing her non-compliance with the terms of her probation. Specifically, respondent was informed she violated probation condition 4 by failing to submit her weekly work schedules as requested. Respondent also violated probation condition 6 because she did not submit employment verification forms for Vineyard Pharmacy and Costco Pharmacy in Turlock and Manteca.

Respondent violated probation condition 12 because she did not work a minimum of 80 hours per calendar month. Respondent was informed that although she reported working 20 to 40 hours a week at Costco since April 2021, she did not submit an employment verification form until November 2021, and did not submit her work schedule as required. Respondent was informed that her "probation has been tolled from April 15, 2020, as the Board has not been able to fully monitor [her] probation." Additionally, she was notified that "any month during which this minimum is not met shall extend the period of probation by one month." Respondent's probation had been tolled for 25 months.

Respondent was also informed that she violated probation condition 16, because she failed to "submit within 60 days of the effective date an appropriate program for remedial education for prior approval." The Board had not yet received her request for approval."

33. On June 10, 2022, respondent sent the Board several documents, including payment of probation monitoring costs and statements asserting that her probation ended in April 2021.

34. On November 21, 2022, Mr. Macias emailed a letter to respondent, addressing her non-compliance with the terms of her probation. Specifically, respondent was informed she violated probation condition 2 because she failed to submit her October 10, 2022, quarterly report. She violated probation condition 4 because she failed to submit her work schedule. Respondent violated probation condition 6 because she failed to provide an employment verification for all the pharmacies where she worked.

She violated probation condition 12, because she did not work a minimum of 80 hours per calendar month. Respondent was informed that although she reported working 20 to 40 hours a week at Costco since April 2021, she did not submit an employment verification form until November 2021, and did not submit her work schedule as required. Respondent was informed that her "probation has been tolled from April 15, 2020, as the Board has not been able to fully monitor [her] probation." Additionally, she was notified that "any month during which this minimum is not met shall extend the period of probation by one month." Respondent's probation had been tolled for 30 months.

Respondent was also informed that she violated probation condition 16, because she failed submit "any remedial education request for year one and year two of probation."

2023 PROBATION VIOLATIONS

35. On January 17, 2023, the Board requested and received respondent's work schedule for the month of February 2023 from PIC Benjamin at Costco 142 in Merced. As a result, Ms. Nip scheduled a site visit to the Costco Pharmacy on February 24, 2023, when respondent was scheduled to work.

36. On February 24, 2023, respondent arrived at Costco 142. Respondent was scheduled to work from 1:15 p.m. to 7:15 p.m. but was not at work. PIC Benjamin informed Ms. Nip that "respondent decided to leave for vacation on a cruise after the schedule was posted."

37. Between December 8, 2022, and March 2, 2023, the Board mailed respondent three letters requesting documentation verifying the completion of 30 hours of continuing education during the two years from June 1, 2020, through May 31, 2022, as an audit for respondent's license renewal. Respondent failed to submit the requested information. As a result, on March 3, 2023, Mr. Macias sent an email to respondent informing her that two certified letters sent to her address of record were not delivered and requesting she update her address of record or respond to the request to submit the required proof of continuing education.

38. As of March 17, 2023, respondent had not responded to any of the Board's requests regarding submitted proof of continuing education. Therefore, her license was placed and remained in an inactive status until about March 23, 2023.

39. On March 20, 2023, respondent telephoned Ms. Nip and stated that her probation should have concluded on April 15, 2022. Ms. Nip informed respondent that her probation did not end and directed her to review the Disciplinary Order she signed that stated her probation was for three years. Respondent claimed that "the settlement

was only verbal, and she had not signed any documents.” Ms. Nip also asked respondent about the non-compliance letters detailing her probation violations. Respondent stated she was “unaware of any such letters and insisted she had fulfilled all the requirements.” Ms. Nip recommended respondent check her emails and mail for the letters. Respondent explained that mailbox “was located 200 miles away.” Ms. Nip reminded respondent that during the initial probation conference in April 2020, she advised her to “update her mailing address to one where she could regularly receive her mail.”

40. On March 22, 2023, Mr. Macias emailed and mailed a letter to respondent, addressing her non-compliance with the terms of her probation. Specifically, respondent was informed she violated probation condition 2, because she failed to submit the quarterly reports due by July 10, 2022, October 10, 2022, and January 10, 2023. She violated probation condition 4, because failed to respond to the Board’s request for her work schedule and to the request for proof of continuing education credits.

Respondent violated probation condition 6 because she failed to provide an employment verification at Costco Pharmacy No. 782 in Turlock and Costco Pharmacy No. 38 in Stockton. She violated probation condition 10, because failed to maintain an active and current pharmacist license starting on March 17, 2023.

She also violated probation condition 12 because she failed to provide information to the Board so that the Board could properly monitor her probation. Respondent was informed that her probation had been tolled for 34 months and that it is a violation of probation for her probation to be “extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.”

Respondent also violated probation condition 16, because she failed to submit for Board approval an “appropriate program for remedial education request for year two and year three of probation.”

41. On April 4, 2023, the Board received from respondent several quarterly reports dated March 22, 2023, to cover for the reports due by January 10, 2023, October 10, 2022, and July 10, 2022. Respondent explained in a letter attached to the reports that she had not checked her mailbox “due to distances.” Respondent also continued to assert that her probation was for two years and ended in April 2022.

In all three quarterly reports, respondent signed under penalty of perjury, affirming the truth and accuracy of the information provided. However, the reports “lacked a penalty of perjury statement regarding compliance with all the terms and conditions of probation, as stipulated in Term 2.” Respondent “only reported Costco Pharmacy at Merced for her work information and provided the number of hours worked per month from April 2022 to December 2022.” Later, Ms. Nip conducted an audit of the document for her worked hours at Costco, which demonstrated that respondent also worked at other Costco locations, such as Turlock, Stockton, and Tracy during this period.

Additionally, respondent submitted evidence of completing continuing education courses. However, none of the courses were “properly submitted for prior approval, and none of them included any live sessions” as required by probation condition 16.

42. On June 29, 2023, Mr. Macias emailed and mailed a letter to respondent, addressing her non-compliance with the terms of her probation. The letter outlines the same probation violations listed in the March 22, 2023 non-compliance letter.

43. On June 30, 2023, respondent submitted the quarterly report that was due by April 10, 2023. Respondent signed and dated on June 30, 2023, under penalty of perjury, affirming the truth and accuracy of the information provided. However, "the report lacked a penalty of perjury statement addressing compliance with all the terms and conditions of probation, as stipulated in Term 2." Respondent reported working over 80 hours in the calendar month of January and February 2023 at Costco in Merced. However, upon further investigation by Ms. Nip, it was discovered that respondent only worked 62 hours in January and 47.64 hours in February 2023.

44. Respondent has not submitted to the Board any quarterly reports since June 2023. Respondent never submitted a plan for remedial program.

ADDITIONAL INVESTIGATION CONDUCTED BY MS. NIP

45. Ms. Nip received from PIC Benjamin respondent's work hours for several locations of Costco Pharmacy between April 13, 2020, and March 16, 2022, and between April 1, 2022, and December 8, 2023. Ms. Nip confirmed that respondent failed to notify the Board of her employment at Costco until she noted it on a quarterly report received by the Board on April 19, 2021. Additionally, respondent only reported working at Costco in Merced, but never reported working at Costco in Turlock, Stockton, Clovis, Tracy, Modesto, or Manteca.

46. Additionally, based on review of timesheet records, Ms. Nip determined that respondent failed to work the required 80 hours per calendar month in June of 2020 through September of 2020, November of 2020 through December of 2020, February of 2021, May of 2022, August of 2022, and January of 2023 through December of 2023.

47. Ms. Nip also spoke to Jennifer Egbert, the hiring manager for Mission Bay Pharmacy. Ms. Egbert also testified at hearing. Ms. Egbert explained that respondent did not tell her she was on probation with the Board. Respondent did not ask Ms. Egbert to sign an employment verification form or form stating she read Accusation. Ms. Egbert also never refused to sign any employment verification for the Board. However, Ms. Egbert explained that Mission Bay Pharmacy would not have hired respondent if they were informed of her probation status.

48. Ms. Nip also spoke to Cathryn Ducan, owner and PIC of Vineyard Pharmacy. Ms. Ducan also testified at hearing. Respondent worked for Vineyard Pharmacy in December 2020. Respondent did not inform PIC Ducan that she was on probation. Respondent did not ask her to sign an employment verification form or read the Accusation or the terms of her probation. Ms. Ducan never refused to sign any forms.

Other Disciplinary Considerations

49. On March 30, 2017, the Board issued respondent Citation No. CI 2016 74627 for violating California Code of Regulations, title 16, section 1751.7, subdivision (b). During an inspection on October 12, 2016, and a subsequent investigation, the inspector found that sterile compounded prescription preparations were dispensed without pharmacy personnel performing a validation process or technique using a microbiological growth medium. In addition, no records of media fill testing were maintained by respondent to show personnel completed the tests at least every 12 months. The Board ordered respondent to pay a \$500 fine. Respondent paid the citation.

50. On August 15, 2018, the Board issued respondent Citation No. CI 2017 80549 for violating California Code of Regulations, title 16, section 1751.8, subdivision (e), 1751.3, subdivision (a)(1), 1735.3, subdivisions (a)(2)(E) and (a)(2)(G), and Business and Professions Code section 4169, subdivision (a)(3). The basis of the citation was that in 2017, respondent engaged in violations related to multiple acts pertaining to compounded sterile products. The Board ordered respondent to pay a total of \$5,000 in fines. Respondent paid the citation.

Additional Evidence Submitted by Respondent

51. Respondent has been licensed as a pharmacist in three states and China. She became licensed in California in 1994. Respondent has dedicated her life to helping others through medical missions around the world. She takes pride in her ability to use her pharmaceutical training to help those in need. She submitted a letter from Matthew Imanaka, Pharm.D., who worked with respondent at Oak Valley. He described respondent as a caring and compassionate pharmacist.

52. Respondent explained that before the Accusation, she had no history of discipline with the Board. Respondent believed that she agreed to two years of probation. At hearing, she continued to contend that her probation ended in April 2022, because the "judge" at the settlement conference that resulted in her agreement to the Disciplinary Order, told her it was a two-year probation. Respondent could not recall if she read or signed the Disciplinary Order. Respondent admitted she was represented by counsel at the settlement conference.

53. Respondent contends that she tried her best to comply with the terms of her probation. However, respondent stopped submitting quarterly reports in April 2022 because she believed her probation had ended. Respondent also did not report

her work at Mission Bay Pharmacy or Vineyard Pharmacy because the positions were temporary. Respondent admitted that there were months she was not able to work 80 hours a month. She traveled to China and was not able to work. Respondent also believed she completed the required remedial education and was confused when she was told the continuing education she completed would not count toward her probation requirements.

54. Respondent explained that she has complied with the terms of her probation since May 2023, because “nobody asked her to do anything.” She was not aware that the filing of the Petition to revoke her probation and the tolling of her probation required that she continue to comply with the terms of her probation. Despite her failure to comply, respondent would like to continue work as a pharmacist. She believes that she complied with the probation terms for the period of time required and that she should be released from probation.

Analysis

55. Complainant established, by a preponderance of the evidence, that respondent violated the terms of her probation. Pursuant to probation condition 13, if she violates the terms of her probation, the Board may set aside the stay order and revoke her license.

56. Respondent made several arguments in an effort to excuse her obligation to comply with the terms of her probation. Most notably, despite reviewing the Disciplinary Order she signed that sets forth the terms of her three-year probation, respondent continued to assert at hearing that her probation ended in April 2022. Respondent attempted to excuse her dishonesty and failure to report her employment with Mission Bay Pharmacy and Vineyard Pharmacy on the basis that the positions

were temporary. Respondent repeatedly told Board staff that her supervisors refused to sign employment verification forms. These statements were also false.

57. Respondent refused to submit work schedules, so Board staff were not able to observe her conduct during work hours. Respondent also reported working more hours than were documented on her time sheets for Costco pharmacies. The result was that for many months she did not work the required 80 hours per month. Respondent repeatedly submitted late and incomplete quarterly reports. Most concerning, respondent was disrespectful and combative with Board staff who were attempting to educate her on how to comply with the terms of her probation.

58. The Board must ensure that respondent can exercise good judgment, comply with the Board's rules and regulations, and that she will not pose a threat to the health, safety, or welfare of the public. The Board has given respondent over four years to demonstrate that she can comply with the terms of her probation. Despite the numerous efforts to remind respondent of her obligations, she has failed to comply with the terms of her probation. When all the facts and circumstances are considered, it would be contrary to the public interest to allow respondent to remain licensed at this time. Pursuant to Condition 13 of respondent's probation, the appropriate discipline is to set aside the stay order and impose the stayed revocation of respondent's license.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving each of the grounds for revoking probation alleged in the Petition to Revoke Probation and must do so by a

preponderance of the evidence. (*Loan Star Security & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 454.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) To be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

Applicable Law

2. Pursuant to Business and Professions Code section 4301:

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.

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

Cause to Revoke Probation

3. Complainant established by a preponderance of the evidence that respondent violated probation condition number 1 by failing to obey all laws. Specifically, respondent violated Business and Professions Code section 4301, subdivisions (f) and (g). Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption when she submitted false employment information to Board staff by omitting locations where she worked as a pharmacist when asked to report her places of employment, and when she told Board staff that she was unemployed when she was, in fact, employed as a pharmacist. Respondent also knowingly made and signed her quarterly reports that falsely reported the number of hours she worked as a pharmacist in a calendar month.

Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license pursuant to probation condition number 13 of the Disciplinary Order.

4. Complainant established by a preponderance of the evidence that respondent violated probation condition number 2 when she failed to timely submit quarterly reports. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license pursuant to probation condition number 13 of the Disciplinary Order.

5. Complainant established by a preponderance of the evidence that respondent violated probation condition number 4 when she failed to cooperate with the Board's inspection program and with Board staff. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license pursuant to probation condition number 13 of the Disciplinary Order.

6. Complainant established by a preponderance of the evidence that respondent violated probation condition number 6 when she failed to report the name and address of each of her employers and “failed to cause her direct supervisor, her pharmacist-in charge/designated representative-in-charge/responsible manager/compliance supervisor, and the owner or owner representative of respondent’s employer to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in First Amended Accusation No. 6597, and the terms and conditions imposed thereby” when respondent failed to submit employment verification forms for all employers to the Board since her probation began on April 15, 2020.

Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent’s license pursuant to probation condition number 13 of the Disciplinary Order.

7. Complainant established by a preponderance of the evidence that respondent violated probation condition number 10 when she failed to maintain an active, current Pharmacist License. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent’s license pursuant to probation condition number 13 of the Disciplinary Order.

8. Complainant established by a preponderance of the evidence that respondent violated probation condition number 12 when she failed to meet the practice requirements. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent’s license pursuant to probation condition number 13 of the Disciplinary Order.

9. Complainant established by a preponderance of the evidence that respondent violated probation condition number 16 when she failed to submit to the Board an appropriate program of remedial education for the Board's approval. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license pursuant to probation condition number 13 of the Disciplinary Order.

Conclusion

10. When all of the evidence is considered, complainant demonstrated that respondent cannot continue to be licensed at this time, without posing a threat to the health, safety, or welfare of the public

ORDER

The Petition to Revoke the Probation of So-Sheung Fong, Pharmacist License Number RPH 47613, is GRANTED. Pharmacist License Number RPH 47613 issued to So-Sheung Fong is REVOKED.

DATE: November 18, 2024

Marcie Larson

Marcie Larson (Nov 18, 2024 13:30 PST)

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 KAREN R. DENVER
Supervising Deputy Attorney General
3 MALISSA N. SIEMANTEL
Deputy Attorney General
4 State Bar No. 240157
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7555
Facsimile: (916) 324-5567
7 *Attorneys for Complainant*

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

12 In the Matter of the Petition to Revoke
13 Probation Against:

14 **SO-SHEUNG FONG**
15 **P.O. Box 3805**
Modesto, CA 95352-3805

16 **Pharmacist License No. RPH 47613**

17 Respondent.

Case No. 7457

OAH No. 2023070663

**FIRST AMENDED PETITION TO
REVOKE PROBATION**

18
19
20 Complainant alleges:

21 **PARTIES**

22 1. Anne Sodergren (Complainant) brings this First Amended Petition to Revoke
23 Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy,
24 Department of Consumer Affairs (Board).

25 2. On or about August 24, 1994, the Board issued Pharmacist License Number RPH
26 47613 to So-Sheung Fong (Respondent). The Pharmacist License was in effect at all times
27 relevant to the charges brought herein and will expire on May 31, 2024, unless renewed.

28 ///

1 **UNDERLYING DISCIPLINE**

2 3. In a disciplinary action titled “*In the Matter of the Accusation Against Oak Valley*
3 *District Hospital and So-Sheung Fong*,” Case No. 6597, the Board issued a Decision and Order,
4 effective April 15, 2020, in which Respondent’s Pharmacist License was revoked. However, the
5 revocation was stayed and Respondent’s Pharmacist License was placed on probation for a period
6 of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit
7 A and is incorporated by reference.

8 **JURISDICTION**

9 4. This First Amended to Revoke Probation is brought before the Board under the
10 authority of the following laws. All section references are to the Business and Professions Code
11 (Code) unless otherwise indicated.

12 5. Code section 118, subdivision (b), provides that the suspension, expiration, surrender,
13 or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
14 disciplinary action during the period within which the license may be renewed, restored, reissued
15 or reinstated.

16 **PETITION TO REVOKE PROBATION**

17 6. At all times after the effective date of Respondent’s probation, Condition 13 stated:

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

25 If respondent violates probation in any respect, the board, after giving
26 respondent notice and an opportunity to be heard, may revoke probation and carry out
27 the disciplinary order that was stayed. If a petition to revoke probation or an
28 accusation is filed against respondent during probation, or the preparation of an
29 accusation or petition to revoke probation is requested from the Office of the
30 Attorney General, the board shall have continuing jurisdiction and the period of
31 probation shall be automatically extended until the petition to revoke probation or
32 accusation is heard and decided, and the charges and allegations in First Amended
33 Accusation No. 6597 shall be deemed true and correct.

34 7. Respondent’s probation is subject to revocation in that she violated probation as set
35 forth below.

1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Failure to Obey All Laws)**

3 8. At all times after the effective date of Respondent’s probation, Condition 1 stated:

4 Respondent shall obey all state and federal laws and regulations.

5 ...

6 9. Respondent’s probation is subject to revocation for failing to comply with Probation
7 Condition 1, in that Respondent has failed to obey all laws as follows:

8 a. Respondent violated Code section 4301, subdivision (f), in that Respondent
9 committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption when she
10 submitted false employment information to Board staff by omitting locations where she worked
11 as a pharmacist when asked to report her places of employment, and when she told Board staff
12 that she was unemployed when she was, in fact, employed as a pharmacist.

13 b. Respondent violated Code section 4301, subdivision (g), in that Respondent
14 knowingly made and signed her quarterly reports that falsely reported the number of hours she
15 worked as a pharmacist in a calendar month.

16 **SECOND CAUSE TO REVOKE PROBATION**

17 **(Failure to Submit Quarterly Reports)**

18 10. At all times after the effective date of Respondent’s probation, Condition 2 stated:

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

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

25 11. Respondent’s probation is subject to revocation for failing to comply with Probation
26 Condition 2, as follows:

27 a. Respondent failed to timely submit quarterly reports since her probation began on
28 April 15, 2020.

1 6597, and the terms and conditions imposed thereby in advance of respondent
2 commencing work at such licensed entity. A record of this notification must be
provided to the board upon request.

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

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

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

12 13. Respondent's probation is subject to revocation for failing to comply with Probation
13 Condition 6, in that Respondent failed to report the name and address of each of her employers
14 when she reported only that she worked at Costco #142 and failed to report all of the other Costco
15 pharmacies where she worked, including Costco #1360, Costco #661, Costco #1031, Costco
16 #658, Costco #38, Costco #782, UCSF Medical Center/Mission Bay, and Vineyard Pharmacy &
17 Gifts.

18 14. Respondent's probation is also subject to revocation for failing to comply with
19 Probation Condition 6, in that Respondent failed to cause her direct supervisor, her pharmacist-in-
20 charge/designated representative-in-charge/responsible manager/compliance supervisor, and the
21 owner or owner representative of Respondent's employer to report to the Board in writing
22 acknowledging that the listed individual(s) has/have read the decision in First Amended
23 Accusation No. 6597, and the terms and conditions imposed thereby when Respondent failed to
24 submit employment verification forms for all employers, except for Costco #142, which was
25 submitted late on November 17, 2021, to the Board since her probation began on April 15, 2020.

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1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Maintain an Active, Current Pharmacist License)**

3 15. At all times after the effective date of Respondent’s probation, Condition 10 stated:

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

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

12 16. Respondent’s probation is subject to revocation for failing to comply with Probation
13 Condition 10, referenced above, in that Respondent failed to maintain an active, current
14 Pharmacist License when the Board issued an inactive Pharmacist License to Respondent on or
15 about March 17, 2023, because Respondent did not submit proof of continuing education.

16 **FIFTH CAUSE TO REVOKE PROBATION**

17 **(Failure to Meet Practice Requirement)**

18 17. At all times after the effective date of Respondent’s probation, Condition 12 stated:

19 Except during periods of suspension, respondent shall, at all times while
20 on probation, be employed as a Pharmacist in California for a minimum of 80 hours
21 per calendar month. Any month during which this minimum is not met shall extend
22 the period of probation by one month. During any such period of insufficient
23 employment, respondent must nonetheless comply with all terms and conditions of
24 probation, unless respondent receives a waiver in writing from the board or its
25 designee.

26 If respondent does not practice as a Pharmacist in California for the
27 minimum number of hours in any calendar month, for any reason (including
28 vacation), respondent shall notify the board in writing within ten (10) days of the
conclusion of that calendar month. This notification shall include at least: the date(s),
location(s), and hours of last practice; the reason(s) for the interruption or reduction in
practice; and the anticipated date(s) on which respondent will resume practice at the
required level. Respondent shall further notify the board in writing within ten (10)
days following the next calendar month during which respondent practices as a
Pharmacist in California for the minimum of hours. Any failure to timely provide
such notification(s) shall be considered a violation of probation.

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

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1 18. Respondent's probation is subject to revocation for failing to comply with Probation
2 Condition 12, referenced above, in that Respondent failed to submit requested work schedules to
3 the Board to show employment for the required minimum monthly hours and allow the Board to
4 verify her employment.

5 19. Respondent's probation is subject to revocation for failing to comply with Probation
6 Condition 12, referenced above, in that Respondent failed to work a minimum of 80 hours per
7 calendar month in February of 2021, March of 2022, May of 2022, August of 2022, and January
8 of 2023 through December of 2023.

9 20. Respondent's probation is subject to revocation for failing to comply with Probation
10 Condition 12, referenced above, in that Respondent's probation tolled for a total period of thirty-
11 six (36) months due to Respondent's failure to show employment for the required minimum
12 monthly hours, as set forth in paragraph 18, above.

13 **SIXTH CAUSE TO REVOKE PROBATION**

14 **(Failure to Submit Remedial Education Program for Approval)**

15 21. At all times after the effective date of Respondent's probation, Condition 16 stated:

16 Within 60 days of the effective date of this decision, respondent shall
17 submit to the board or its designee, for prior approval, an appropriate program of
18 remedial education related to the grounds for discipline. During the second to the
19 third year of probation, the program of remedial education shall consist of at least 10
20 hours per year of probation in pharmacy operations and law, sterile compounding,
21 and the role of a Pharmacist-in-Charge. All of these remedial courses shall be
22 completed at respondent's own expense. At least 50% of these hours must be in-
23 person courses each year. All remedial courses shall be in addition to, and shall not
24 be credited toward, continuing education (CE) courses used for license renewal
25 purposes for pharmacists.

26 Failure to timely submit for approval or complete the approved remedial
27 education shall be considered a violation of probation. The period of probation will
28 be automatically extended until such remedial education is successfully completed
and written proof, in a form acceptable to the board, is provided to the board or its
designee.

Following the completion of each course, the board or its designee may
require the respondent, at Respondent's own expense, to take an approved
examination to test the respondent's knowledge of the course. If the respondent does
not achieve a passing score on the examination that course shall not count towards
satisfaction of this term. Respondent shall take another course approved by the board
in the same subject area.

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1 violations related to multiple acts pertaining to compounded sterile products. The Board ordered
2 Respondent to pay a total of \$5,000 in fines. Respondent paid the citation.

3 **PRAYER**

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

6 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 6597
7 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.
8 RPH 47613 issued to So-Sheung Fong;

9 2. Revoking or suspending Pharmacist License No. RPH 47613, issued to So-Sheung
10 Fong, and,

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

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DATED: 4/17/2024

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

Digitally signed by Sodergren,
Anne@DCA
Date: 2024.04.17 08:29:28
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Exhibit A

Decision and Order

Board of Pharmacy Case No. 6597

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

In the Matter of the First Amended Accusation Against:

**OAK VALLEY DISTRICT HOSPITAL; SO-SHEUNG FONG,
PHARMACIST IN CHARGE,
Hospital Pharmacy Permit No. HPE 37672,
Sterile Compounding Permit No. LSE 100567; and**

**SO-SHEUNG FONG,
Pharmacist License No. RPH 47613,**

Respondents

Agency Case No. 6597

OAH No. 2019040648

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 15, 2020.

It is so ORDERED on March 16, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 SUMMER D. HARO
Deputy Attorney General
4 State Bar No. 245482
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7510
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

14 **OAK VALLEY DISTRICT HOSPITAL;**
15 **SO-SHEUNG FONG, PHARMACIST-IN-CHARGE**
16 **350 S. Oak Avenue**
17 **Oakdale, CA 95361**

18 **Hospital Pharmacy Permit No. HPE 37672**
19 **Sterile Compounding Permit No. LSE 100567,**

20 **and**

21 **SO-SHEUNG FONG**
22 **P.O. Box 3805**
23 **Modesto, CA 95352-3805**

24 **Pharmacist License No. RPH 47613**

25 Respondents.

Case No. 6597

OAH No. 2019040648

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

**[FOR RESPONDENT
SO-SHEUNG FONG,
PHARMACIST-IN-CHARGE,
ONLY]**

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

27 ///

28 ///

1 **PARTIES**

2 1. Anne Sodergren (“Complainant”) is the Interim Executive Officer of the Board of
3 Pharmacy (“Board”). She brought this action solely in her official capacity and is represented in
4 this matter by Xavier Becerra, Attorney General of the State of California, by Summer D. Haro,
5 Deputy Attorney General.

6 2. Respondent So-Sheung Fong, Pharmacist-in-Charge (“Respondent”) is represented in
7 this proceeding by attorney Natalia Mazina, whose address is:

8 100 Pine Street, Suite 1250
9 San Francisco, CA 94111-5235.

10 3. On or about August 24, 1994, the Board issued Pharmacist License Number RPH
11 47613 to Respondent Fong. The pharmacist license was in full force and effect at all times
12 relevant to the charges brought in the First Amended Accusation and will expire on May 31,
13 2020, unless renewed.

14 **JURISDICTION**

15 4. Accusation No. 6597 against Respondent was filed before the Board on March 6,
16 2019. The Accusation and all other statutorily required documents were properly served on
17 Respondent on March 11, 2019. Respondent filed her Notice of Defense contesting the
18 Accusation. On August 20, 2019, First Amended Accusation No. 6597 was filed before the
19 Board, properly served on Respondent on August 22, 2019, and is currently pending against
20 Respondent.

21 5. A copy of First Amended Accusation No. 6597 is attached as Exhibit A and
22 incorporated herein by reference.

23 **ADVISEMENT AND WAIVERS**

24 6. Respondent has carefully read, fully discussed with counsel, and understands the
25 charges and allegations in First Amended Accusation No. 6597. Respondent has also carefully
26 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
27 Disciplinary Order.

28 ///

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

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

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

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

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Pharmacist License No. RPH 47613 issued, to So-Sheung
17 Fong, Pharmacist-in-Charge, is revoked. However, the revocation is stayed and Respondent is
18 placed on probation for three (3) years on the following terms and conditions.

19 **1. Obey All Laws**

20 Respondent shall obey all state and federal laws and regulations.

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

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of the
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
25 substances laws
- 26 • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal
27 criminal proceeding to any criminal complaint, information or indictment
- 28 • a conviction of any crime

- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

1 condition of probation. Failure to timely cooperate shall be considered a violation of probation.

2 **5. Continuing Education**

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

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

6 During the period of probation, respondent shall notify all present and prospective
7 employers of the decision in First Amended Accusation No. 6597 and the terms, conditions and
8 restrictions imposed on respondent by the decision, as follows:

9 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
10 undertaking any new employment, respondent shall report to the board in writing the name,
11 physical address, and mailing address of each of Respondent's employer(s), and the name(s) and
12 telephone number(s) of all of Respondent's direct supervisor(s), as well as any pharmacist(s)-in-
13 charge, designated representative(s)-in-charge, responsible manager, or other compliance
14 supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for
15 leaving the prior employment. Respondent shall sign and return to the board a written consent
16 authorizing the board or its designee to communicate with all of respondent's employer(s) and
17 supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board
18 or its designee, concerning respondent's work status, performance, and monitoring. Failure to
19 comply with the requirements or deadlines of this condition shall be considered a violation of
20 probation.

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause (a) Respondent's direct
23 supervisor, (b) Respondent's pharmacist-in-charge, designated representative-in-charge,
24 responsible manager, or other compliance supervisor, and (c) the owner or owner representative
25 of Respondent's employer, to report to the board in writing acknowledging that the listed
26 individual(s) has/have read the decision in First Amended Accusation No. 6597, and terms and
27 conditions imposed thereby. If one person serves in more than one role described in (a), (b), or
28 (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that

1 these acknowledgment(s) are timely submitted to the board. In the event of a change in the
2 person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent
3 shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen
4 (15) days of the change acknowledging that he or she has read the decision in First Amended
5 Accusation No. 6597, and the terms and conditions imposed thereby.

6 If respondent works for or is employed by or through an employment service, respondent
7 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
8 of the decision in First Amended Accusation No. 6597, and the terms and conditions imposed
9 thereby in advance of respondent commencing work at such licensed entity. A record of this
10 notification must be provided to the board upon request.

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

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

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

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

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

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

1 **8. Restrictions on Supervision and Oversight of Licensed Facilities –**

2 During the period of probation, respondent shall not supervise any intern pharmacist, be the
3 pharmacist-in-charge, designated representative-in-charge, responsible manager or other
4 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
5 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

6 **9. Reimbursement of Board Costs**

7 As a condition precedent to successful completion of probation, respondent shall pay to the
8 board its costs of investigation and prosecution in the amount of \$4,000.00. Respondent shall be
9 permitted to pay these costs in a payment plan approved by the board or its designee, so long as
10 full payment is completed no later than one (1) year prior to the end date of probation. Probation

11 **Monitoring Costs**

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

16 **10. Status of License**

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

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

25 **11. License Surrender While on Probation/Suspension**

26 Following the effective date of this decision, should respondent cease practice due to
27 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
28 respondent may relinquish her Pharmacist License, including any indicia of licensure issued by

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

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

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

14 Except during periods of suspension, respondent shall, at all times while on probation, be
15 employed as a Pharmacist in California for a minimum of 80 hours per calendar month. Any
16 month during which this minimum is not met shall extend the period of probation by one month.
17 During any such period of insufficient employment, respondent must nonetheless comply with all
18 terms and conditions of probation, unless respondent receives a waiver in writing from the board
19 or its designee.

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

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

5 **13. Violation of Probation**

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

12 If respondent violates probation in any respect, the board, after giving respondent notice
13 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
14 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
15 probation, or the preparation of an accusation or petition to revoke probation is requested from
16 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
17 probation shall be automatically extended until the petition to revoke probation or accusation is
18 heard and decided, and the charges and allegations in First Amended Accusation No. 6597 shall
19 be deemed true and correct.

20 **14. Completion of Probation**

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

23 **15. Restricted Practice**

24 Respondent's practice as a Pharmacist shall be prohibited from compounding for the first
25 year of probation, and Respondent shall not prepare, oversee, or participate in the preparation of
26 sterile compounds during the first year of probation, unless and until Respondent has taken and
27 completed, at her own expense, a continuing education ("CE") course on sterile compounding,
28 approved by the Accreditation Council for Pharmacy Education ("ACPE"), that consists of the

1 following minimum requirements:

- 2 a. 8 hours of CE on Fundamentals of Sterile Compounding;
- 3 b. 4 hours of CE on Engineering Controls for Sterile Compounding;
- 4 c. 3 hours of CE on Personnel Sampling Metrics;
- 5 d. 2 hours of CE on Viable Facility Sampling Metrics;
- 6 e. 3 hours of CE on Sanitization of Pharmacy Controlled Environments;
- 7 f. 5 hours of CE on Aseptic Technique and Related Work Practices;
- 8 g. 4 hours of CE on High Risk Compounding Practices; and
- 9 h. 5 hours of CE on Requirements and Best Practices for Hazardous Drug
10 Compounding;

11 Respondent shall submit proof satisfactory to the board or its designee of compliance with this
12 term of probation.

13 Upon request, respondent shall submit to the board or its designee on writing, satisfactory
14 proof of compliance with this restriction, including but not limited to a written acknowledgment
15 of this restriction signed by (a) respondent's direct supervisor, (b) the pharmacist-in-charge, and
16 (c) the owner or owner representative of his or her employer, which explains whether the
17 workplace in question compounds drug preparations and how this restriction will be enforced.

18 Failure to abide by this restriction or to timely submit proof to the board or its designee shall be
19 considered a violation of probation.

20 16. Remedial Education

21 Within 60 days of the effective date of this decision, respondent shall submit to the board or
22 its designee, for prior approval, an appropriate program of remedial education related to the
23 grounds for discipline. During the second to the third year of probation, the program of remedial
24 education shall consist of at least 10 hours per year of probation in pharmacy operations and law,
25 sterile compounding, and the role of a Pharmacist-in-Charge. All of these remedial courses shall
26 be completed at respondent's own expense. At least 50% of these hours must be in-person
27 courses each year. All remedial courses shall be in addition to, and shall not be credited toward,
28 continuing education (CE) courses used for license renewal purposes for pharmacists.

1 Failure to timely submit for approval or complete the approved remedial education shall be
2 considered a violation of probation. The period of probation will be automatically extended until
3 such remedial education is successfully completed and written proof, in a form acceptable to the
4 board, is provided to the board or its designee.

5 Following the completion of each course, the board or its designee may require the
6 respondent, at Respondent's own expense, to take an approved examination to test the
7 respondent's knowledge of the course. If the respondent does not achieve a passing score on the
8 examination that course shall not count towards satisfaction of this term. Respondent shall take
9 another course approved by the board in the same subject area.

10 **17. Diversion Training Program**

11 Within the first year of probation, respondent shall enroll in the board's diversion training
12 program, "Prescription Drug Abuse and Diversion What a Pharmacist Needs to Know," at
13 respondent's expense. Respondent shall provide proof of enrollment upon request. Within five (5)
14 days of completion, respondent shall submit a copy of the certificate of completion to the board or
15 its designee. Failure to timely enroll in the program, to initiate the program during the first year of
16 probation, to successfully complete it before the end of the second year of probation, or to timely
17 submit proof of completion to the board or its designee, shall be considered a violation of
18 probation.

19 **18. No Ownership or Management of Licensed Premises**

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

27 ///

28 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Natalia Mazina. I understand the stipulation and the effect it will
4 have on my Pharmacist License No. RPH 47613. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Board of Pharmacy.

7
8 DATED: January 27, 2020

9 
10 _____
11 SO-SHEUNG FONG, PHARMACIST-IN-CHARGE
12 Respondent

13 I have read and fully discussed with Respondent So-Sheung Fong, Pharmacist-in-Charge
14 the terms and conditions and other matters contained in the above Stipulated Settlement and
15 Disciplinary Order. I approve its form and content.

16 DATED: Jan. 27, 2020

17 
18 _____
19 NATALLIA MAZINA
20 Attorney for Respondent

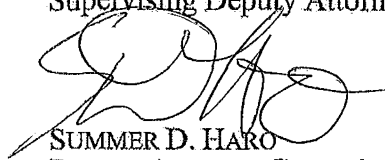
21 ENDORSEMENT

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

24 DATED: 1/29/20

25 Respectfully submitted,

26 XAVIER BECERRA
27 Attorney General of California
28 DAVID E. BRICE
Supervising Deputy Attorney General


SUMMER D. HARO
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 6597

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 MABEL LEW
Deputy Attorney General
4 State Bar No. 158042
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6104
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the First Amended Accusation
Against:

Case No. 6597

13 **OAK VALLEY DISTRICT HOSPITAL**
14 **350 S. Oak Avenue**
Oakdale, CA 95361
15 **SO-SHEUNG FONG, Pharmacist-In-Charge**

FIRST AMENDED ACCUSATION

16 **Hospital Pharmacy Permit No. HPE 37672**
Sterile Compounding Permit No. LSE 100567

17 **and**

18 **SO-SHEUNG FONG**
19 **P.O. Box 3805**
Modesto, CA 95352-3805

20 **Pharmacist License No. RPH 47613**

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

25 1. Anne Sodergren (“Complainant”) brings this First Amended Accusation solely in her
26 official capacity as the Interim Executive Officer of the Board of Pharmacy (“Board”),
27 Department of Consumer Affairs.
28

1 (d) Every pharmacy shall notify the board in writing, on a form designed
2 by the board, within 30 days of the date when a pharmacist-in-charge ceases to act as
3 the pharmacist-in-charge, and shall on the same form propose another pharmacist to
4 take over as the pharmacist-in-charge. The proposed replacement pharmacist-in-
5 charge shall be subject to approval by the board....

6

7 11. Code section 4301 states, in pertinent part:

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

12

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

18 12. Code section 4305 states, in pertinent part:

19 (a) Failure by any pharmacist to notify the board in writing that he or she
20 has ceased to act as the pharmacist-in-charge of a pharmacy, or by any pharmacy to
21 notify the board in writing that a pharmacist-in-charge is no longer acting in that
22 capacity within the 30-day period specified in sections 4101 and 4113 shall constitute
23 grounds for disciplinary action.

24 (b) Operation of a pharmacy for more than 30 days without supervision
25 or management by a pharmacist-in-charge shall constitute grounds for disciplinary
26 action.

27 (c) Any person who has obtained a license to conduct a pharmacy, who
28 willfully failed to timely notify the board that the pharmacist-in-charge of the
pharmacy has ceased to act in that capacity, and who continues to permit the
compounding or dispensing of prescriptions, or the furnishing of drugs, or poisons, in
his or her pharmacy, except by a pharmacist subject to the supervision and
management of a responsible pharmacist-in-charge, shall be subject to summary
suspension or revocation of his or her license to conduct a pharmacy.

13. Title 16, California Code of Regulations (“CCR”), section 1709 states, in pertinent
part:

(a) Each permit to operate a pharmacy shall show the name and address
of the pharmacy, the form of ownership (individual, partnership or corporation) and
the pharmacist-in-charge. Each pharmacy shall, in its initial application on the annual
renewal form, report the name of the pharmacist-in-charge.... Any changes in the
pharmacist-in-charge ... shall be reported to the Board within 30 days.

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14. CCR section 1709.1 states, in pertinent part:

(a) The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

....

15. CCR section 1735.2 states, in pertinent part:

....

(i) Every compounded drug preparation shall be given a beyond use date representing the date or date and time beyond which the compounded drug preparation should not be used, stored, transported or administered, and determined based on the professional judgment of the pharmacist performing or supervising the compounding.

(2) For sterile compounded drug preparations, the beyond use date shall not exceed any of the following:

(D) The beyond used date assigned for sterility in section 1751.8.

....

16. CCR section 1735.3 states, in pertinent part:

(a) For each compounded drug preparation, pharmacy records shall include:

....

(2) A compounding log consisting of a single document containing all of the following:

....

(B) The date the drug preparation was compounded.

....

17. CCR section 1735.5 states, in pertinent part:

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

....

1 18. CCR section 1751.1 states, in pertinent part:

2 (a) In addition to the records required by section 1735.3, any pharmacy
3 engaged in any compounding of sterile drug preparations shall maintain the following
4 records, which must be readily retrievable, within the pharmacy:

5 (1) Documents evidencing training and competency evaluations of
6 employees in sterile drug preparation policies and procedures.

7 (2) Results of hand hygiene and garbing assessments with integrated
8 gloved fingertip testing.

9 (3) Results of assessments of personnel for aseptic techniques including
10 results of media-fill tests and gloved fingertip testing performed in association with
11 media-fill tests.

12

13 (11) Preparation records including the master formula document, the
14 preparation compounding log, and records of end-product evaluation testing and
15 results.

16

17 (c) Pharmacies shall maintain and retain all records required by this
18 article in the pharmacy in a readily retrievable form for at least three years from the
19 date the record was created. If only recorded and stored electronically on magnetic
20 media, or in any other computerized form, the records shall be maintained as
21 specified by Business and Professions Code section 4070 subsection (c).

22 19. CCR section 1751.3 states, in pertinent part:

23 (a) Any pharmacy engaged in compounding sterile drug preparations
24 shall maintain written policies and procedures for compounding. Any material failure
25 to follow the pharmacy's written policies and procedures shall constitute a basis for
26 disciplinary action. In addition to the elements required by section 1735.5, there shall
27 be written policies and procedures regarding the following:

28 (1) Action levels for colony-forming units (CFUs) detected during viable
surface sampling, glove fingertip, and viable air sampling and actions to be taken
when the levels are exceeded.

....

(3) An environmental sampling plan and procedures specific to viable air,
surface and gloved fingertip sampling as well as nonviable particle sampling.

....

(5) Compounded sterile drug preparation stability and beyond use dating.

(6) Compounding, filling, and labeling of sterile drug preparations.

....

1 (19) Quality assurance program compliant with sections 1711, 1735.8 and
1751.7.

2 (20) Record keeping requirements.

3 (21) Temperature monitoring in compounding and controlled storage
4 areas.

5

6 (b) For lot compounding, the pharmacy shall maintain written policies
and procedures that includes, in addition to the elements required by section 1735.5
7 and 1751.3(a), written policies and procedures regarding the following:

8 (1) Use of master formula documents and compounding logs . . .

9

10 (d) Policies and procedures shall be immediately available to all
personnel involved in compounding activities and to board inspectors . . .

11 20. CCR section 1751.8 states, in pertinent part:

12 In conformity with and in addition to the requirements and limitations of
13 section 1735.2, subdivision (h), every sterile compounded drug preparation shall be
given and labeled with a beyond use date that does not exceed the shortest expiration
14 date or beyond use date of any ingredient in sterile compounded drug preparation, nor
the chemical stability of any one ingredient in the sterile compounded drug
15 preparation, and that, in the absence of passing a sterility test in accordance with
standards for sterility testing found in Chapter 797 of the United States,
16 Pharmacopeia – National Formulary (USP37-NF-32) Through 2nd Supplement (37th
Revision, Effective December 1, 2014), hereby incorporated by reference, that would
17 justify an extended beyond use date, conforms to the following limitations:

18 (d) The beyond use date shall specify that storage and exposure periods
cannot exceed 12 hours where the sterile compounded drug preparation is
19 compounded solely with aseptic manipulations and all of the following apply:

20 (1) The preparation was compounded entirely within an ISO Class 5 PEC
that is located in a segregated sterile compounding area and restricted to sterile
21 compounding activities, using only sterile ingredients, components, and devices, by
personnel properly cleansed and garbed, and

22 (2) The compounding process involves simple transfer of not more than
23 three commercially manufactured packages of sterile nonhazardous preparations or
diagnostic radiopharmaceutical preparations from the manufacturer’s original
24 containers; and

25 (3) The compounding process involves not more than two entries into
any one container or package (e.g., bag, vial) of sterile infusion solution or
26 administration container/device.

27 (e) Where any sterile compounded drug preparation was compounded
either outside of an ISO class 5 PEC or under conditions that do not meet all of the
28 requirements for any of subdivisions (a) through (d), the sterile compounded drug
preparation shall be labeled “for immediate use only” and administration shall begin

no later than one hour following the start of the compounding process....

....

COST RECOVERY

21. Code section 125.3 provides, in pertinent part, that a 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.

STATEMENT OF FACTS

22. On or about July 30, 2018, a Board Inspector conducted an annual sterile compounding license renewal inspection at Oak Valley District Hospital (“OVDH”). Respondent Fong, was OVDH’s pharmacist-in-charge (“PIC”) since November 4, 2013. Towards the end of the inspection, the Board inspector reviewed the hospital’s compounding policies and procedures and determined that they were incomplete or not maintained by the pharmacy. The policies and procedures were still not compliant with California law even after a Board Inspector issued a correction and violation during a similar renewal inspection on September 27, 2017, as discussed below.

23. On or about May 24, 2019, a Board Inspector conducted an inspection at OVDH.

24. As a part of the May 24, 2019 inspection and subsequent investigation, the Inspector reviewed various records and documents related to the dispensing of compounded sterile drug preparations. The Inspector noted Respondents did not maintain or have available the following records as required by regulation and by their policies and procedures: staff training and competency, end product testing, gloved fingertip testing, and media fill testing.

25. At the May 24, 2019 inspection and subsequent investigation, the Inspector found Respondents compounded sterile drug preparations in a segregated compounding area and documented incorrect beyond use dates¹ (“BUD”) or failed to label any BUD, and medium risk sterile compounded drug preparations were not labeled “for immediate use only”. Pursuant to OVDH policy for compounded drug preparations prepared in a segregated compounding area, the

¹ A “Beyond Use Date” (“BUD”) is the date after which a compounded medication should be discarded.

1 maximum BUD for low risk sterile compounded drug preparations was “12 hours”; medium risk
2 sterile compounded drug preparations was “immediate use”. The Inspector found that there were
3 a number of medium risk sterile compounded drug preparations that were not labeled for
4 immediate use only.

5 26. The May 24, 2019 inspection and subsequent investigation also found Respondents
6 did not maintain a record of the date compounded for a number of sterile drug preparations.

7 27. During the May 24, 2019 inspection, the Inspector was informed by OVDH personnel
8 that OVDH’s PIC, Respondent Fong, had been on medical leave since April 5, 2019. B.N., a
9 pharmacist who was present during the inspection, provided information and documents to the
10 Inspector. B.N. informed the Inspector that she was not the PIC for OVDH, and that she was
11 assisting in the hiring of a new PIC. Neither OVDH nor Respondent Fong notified the Board in
12 writing that Respondent Fong was no longer supervising, managing, or working at the pharmacy.

13 28. As a result of the May 24, 2019 inspection and subsequent investigation, the
14 Inspector found that between April 5, 2019 and June 10, 2019, Respondent Fong remained
15 designated as the PIC at OVDH, even though she was on medical leave. Also during that period,
16 the Inspector found that OVDH continued to operate dispensing and compounding sterile drug
17 prescriptions in a segregated compounding area, and documented incorrect beyond use dates
18 without being subject to the supervision and management of a responsible pharmacist-in-charge.

19 29. On June 10, 2019, OVHD sent the change of PIC form to the Board.

20 **RESPONDENT OAK VALLEY DISTRICT HOSPITAL**
21 **(Hospital Pharmacy Permit No. HPE 37672 and**
22 **Sterile Compounding Permit No. LSE 100567)**

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Respondent OVDH: Inadequate Policies and Procedures – July 30, 2018 Inspection)**

25 30. Respondent OVDH’s Hospital Pharmacy Permit No. HPE 37672 and Sterile
26 Compounding Permit No. LSE 100567 is subject to disciplinary action pursuant to Code section
27 4301, subdivision (o), for unprofessional conduct, in that on July 30, 2018, Respondent OVDH
28

1 violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of or
2 conspired to violate CCR section 1751.3, as set forth in paragraph 22, in the following respects:

3 a. Respondent OVDH failed to state in their written policy and procedure regarding
4 action levels for colony-forming units (CFUs) detected during viable air and surface sampling in
5 the compounding aseptic isolator (CAI) that the pharmacy will identify the CFUs at least to the
6 genus level. Further, Respondent OVDH failed to state that an investigation of cleaning will take
7 place in the event CFUs are detected, in violation of CCR section 1751.3(a)(1). In addition,
8 Respondent OVDH was previously cited for the violation via Citation No. CI 2017 80548, as set
9 forth in paragraph 46(c)(1-8) below.

10 b. Respondent OVDH stated in their written policy and procedure regarding the
11 compounding, filling and labeling of sterile drug preparations that personnel with an upper
12 respiratory infection or conjunctivitis shall not work in the IV room and that personnel with an
13 infection, rash or sunburn on their hands shall not prepare sterile products. Respondent OVDH
14 failed to mention or include in their policy that personnel with weeping sores, other
15 communicable diseases, cosmetics, nail polish and artificial nails shall not prepare sterile
16 products, in violation of CCR section 1751.3(a)(6). Further, Respondent OVDH failed to include
17 or mention in their policy that personnel with exposed rashes or sunburns on their hands shall not
18 prepare sterile products.

19 c. Respondent OVDH failed to discuss in their written policy and procedure regarding
20 the compounding, filling and labeling of sterile drug preparations the labeling of sterile drug
21 preparations as it relates to the requirements in CCR sections 1751.2, 1707.5, and 1735.4, and
22 Code section 4076, in violation of CCR section 1751.3(a)(6). Further, Respondent OVDH was
23 previously cited for the violation via Citation No. CI 2017 80548, as set forth in paragraph
24 46(c)(1-8) below.

25 d. Respondent OVDH discussed in their written environmental sampling plan and
26 procedures specific to viable air, surface and gloved fingertip sampling as well as nonviable
27 particle sampling the temperature and the number of days media fill vials shall be incubated for,
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1 but failed to include the same information; i.e., temperature and number of days, media vials shall
2 be incubated for gloved fingertip sampling plates, in violation of CCR section 1751.3(a)(3).

3 e. Respondent OVDH stated in their written quality assurance plan that qualitative
4 analysis for IV admixture shall be done at least annually and more often if necessary and that two
5 samples of compounded products from the pharmacy's CAI will be sent to a contracted lab
6 annually to test for endotoxins, integrity and strength. Respondent OVDH failed to mention
7 potency testing or scheduled action to be taken in the event any compounded drug preparation
8 was ever discovered to be outside minimum standards in the policy, in violation of CCR section
9 1751.3(a)(19).

10 f. Respondent OVDH failed to maintain a written policy and procedure for compounded
11 sterile drug preparation stability and beyond use dating, in violation of CCR section 1751.3(a)(5).

12 g. Respondent OVDH failed to maintain a written policy and procedure for record
13 keeping requirements, in violation of CCR section 1751.3(a)(20).

14 h. Respondent OVDH failed to maintain a written policy and procedure for temperature
15 monitoring in compounding and controlled storage areas, in violation of CCR section
16 1751.3(a)(21).

17 i. Respondent OVDH failed to maintain a written policy and procedure for use of
18 master formula and compounding logs, in violation of CCR section 1751.3(b)(1).

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Respondent OVDH: Inaccurate Beyond Use Dates for 21 Compounding Sterile Drug Preparations – May 24, 2019 Inspection)**

22 31. Respondent OVDH is subject to disciplinary action pursuant to Code section 4301
23 subdivision (o), CCR section 1735.2 (i)(2)(D) and section 1751.8(d), in that during the May 24,
24 2019 inspection and subsequent investigation, the Inspector was able to determine that, based on
25 pharmacy law and OVDH policy, the maximum allowable BUD for low risk compounded sterile
26 drug preparations to be at 12 hours². However, as set forth in paragraphs 24-25, after reviewing

27 ² After a review of OVDH's Sterile Compounding policies and procedures, September
28 2018 and March 2019 Environmental Certification reports, and Master formulas, the Inspector
was able to determine the maximum allowable BUD for low risk compounded sterile drug
preparations to be at 12 hours, based on pharmacy law and OVHD policy.

1 the February 2019 compounding records, the Inspector found that the following 56 sterile
 2 compounded drug preparations had been given incorrect beyond use dates which were longer than
 3 allowed (BUD longer than 12 hours)³:

Number	Compounded Date	BUD
1247649	01/28/19	02/11/19
1247649	01/28/19	01/10/19
1247715	02/01/19	02/15/19
1247715	02/01/19	02/15/19
1249291	02/03/19	02/17/19
1249291	02/05/19	02/19/19
1247649	02/04/19	02/17/19
1248458	02/04/19	02/17/19
1249476	02/05/19	02/19/19
1248458	02/05/19	02/19/19
1249013	02/06/19	02/20/19
1249476	02/09/19	02/23/19
1249476	02/11/19	02/25/19
1249882	02/11/19	02/25/19
1249798	02/11/19	02/25/19
1249798	02/12/19	02/26/19
1250187	02/12/19	02/26/19
1250187	02/12/19	02/26/19
1250221	02/12/19	02/26/19
1249798	02/12/19	02/26/19
1249882	02/12/19	02/26/19

³ See “CD of Records”, File Names: “Compound Logs, Incorrect BUD Logs”.

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1249476	02/12/19	02/26/19
1250187	02/12/19	02/26/19
1250221	02/12/19	02/26/19
1250561	02/12/19	02/26/19
1249882	02/13/19	02/27/19
1250561	02/14/19	02/28/19
1250187	02/14/19	02/28/19
1249882	02/14/19	02/28/19
1250689	02/14/19	02/28/19
1250689	02/14/19	02/28/19
1250187	02/15/19	03/01/19
1251264	02/16/19	03/03/19
1250561	02/16/19	03/01/19
1250689	02/16/19	02/26/19
1251264	02/17/19	03/03/19
1250689	02/17/19	03/01/19
1251592	02/18/19	03/04/19
1251724	02/18/19	03/04/19
1250689	02/18/19	03/01/19
1251738	02/20/19	03/06/19
1251574	02/20/19	03/06/19
1252613	02/20/19	03/06/19
1251724	02/20/19	03/06/19
1251989	02/21/19	03/07/19
1251574	02/21/19	03/07/19
1251989	02/22/19	03/08/19
1253178	02/26/19	03/12/19

1	1253709	02/27/19	03/13/19
2	1253049	02/27/19	03/13/19
3	1253178	02/27/19	03/13/19
4	1253049	02/28/19	03/14/19
5	1254209	02/28/19	03/14/09
6	1253178	02/28/19	03/14/19
7	1254211	02/28/19	03/14/19
8	1253709	02/28/19	03/14/19

THIRD CAUSE FOR DISCIPLINE

(Respondent OVDH: No Record of Beyond Use Dates for Sterile Compounded Drug Preparations – May 24, 2019 Inspection)

32. Respondent OVDH is subject to disciplinary action pursuant to Code section 4301 subdivision (o), CCR sections 1735.2 (i) and 1751.8, in that during the May 24, 2019 inspection and subsequent investigation, as set forth in paragraph 25, the Inspector found the following four sterile compounded drug preparations had no record of the assigned beyond use date (No BUD)⁴:

Number	Compounded Date
1249476	02/10/19
1249798	02/10/19 (date from label)
1249794	02/10/19
1253111	02/27/19
1273474	05/18/19

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⁴ See “CD of Records”, File Names: “Compound Logs, No BUD Logs”.

FOURTH CAUSE FOR DISCIPLINE

(Respondent OVDH: No Immediate Use Label for Medium Risk Sterile Compounded Drug Preparations – May 24, 2019 Inspection)

33. Respondent OVDH is subject to disciplinary action pursuant to Code section 4301 subdivision (o), CCR sections 1735.2 (i) and 1751.8 (e), in that during the May 24, 2019 inspection and subsequent investigation, as set forth in paragraph 25, the Inspector found that the following three medium risk sterile compounded drug preparations were not labeled for immediate use only⁵:

Number	Compounded Date
1249794	02/10/19
1250501	02/13/19
1273834	05/19/19

FIFTH CAUSE FOR DISCIPLINE

(Respondent OVDH: No Record of Date Compounded for Sterile Compounded Drug Preparations – May 24, 2019 Inspection)

34. Respondent OVDH is subject to disciplinary action pursuant to Code section 4301 subdivision (o), and CCR section 1735.3 (a)(2)(B), in that during the May 24, 2019 inspection and subsequent investigation, as set forth in paragraph 26, the Inspector found that the following sterile compounded drug preparations had no record of the date compounded:

Number	Date on Label
1247649	02/03/19
1248227	02/03/19
1251574	02/21/19
1252613	02/25/19
1253049	02/26/19
1253049	02/27/19

⁵ See “CD of Records”, File Names: “Compound Logs, Medium Risk Logs”.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Respondent OVHD: Failure to Follow Pharmacy’s Written Policies and Procedures**
3 **May 24, 2019 Inspection)**

4 35. Respondent OVDH is subject to disciplinary action pursuant to Code section 4301,
5 subdivision (o), for unprofessional conduct, in that on May 24, 2019, Respondent OVDH violated
6 or attempted to violate, directly or indirectly, or assisted in or abetted the violation of or conspired
7 to violate CCR sections 1751.1 and 1751.3(a), as set forth in paragraphs 24-26 in the following
8 respects:

9 a. On May 24, 2019, and in a subsequent investigation, the Inspector found that 56
10 sterile compounded drug preparations were given incorrect beyond use dates which were longer
11 than allowed, as set forth in the table under paragraph 31.

12 b. On May 24, 2019, and in a subsequent investigation, the Inspector found that four
13 sterile compounded drug preparations had no record of the assigned beyond use date, as set forth
14 in the table under paragraph 32.

15 c. On May 24, 2019, and in a subsequent investigation, the Inspector found that three
16 medium risk sterile compounded drug preparations were not labeled for immediate use only, as
17 set forth in the table under paragraph 33.

18 d. On May 24, 2019, and in a subsequent investigation, the Inspector found that OVDH
19 did not maintain a record of the date compounded for the sterile drug preparations listed in the
20 table under paragraph 34.

21 e. On May 24, 2019, and in a subsequent investigation, the Inspector found that OVDH
22 did not maintain and have available the following records as required by regulation and by their
23 policies and procedures, as set forth in paragraph 24:

- 24 • Staff training and competency;
- 25 • End product testing;
- 26 • Gloved fingertip testing;
- 27 • Media fill testing.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Respondent OVDH: Failure to Notify Board No PIC)**

3 36. Respondent OVDH is subject to disciplinary action pursuant to Code section 4305,
4 subdivision (a), for its failure to notify the Board within 30 days in writing that its PIC,
5 Respondent Fong, was no longer acting in that capacity, as set forth in paragraphs 27-29.

6 **EIGHTH CAUSE FOR DISCIPLINE**

7 **(Respondent OVDH: Operation of Pharmacy Without PIC Beyond 30 Days)**

8 37. Respondent OVDH is subject to disciplinary action pursuant to Code section 4305,
9 subdivision (b), for operating a pharmacy for more than 30 days without supervision or
10 management by a PIC, as set forth in paragraphs 27-29.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Respondent OVDH: Failure to Notify Board No PIC And Continued
13 to Compound and Dispense Prescriptions, Or Furnishes Drugs)**

14 38. Respondent OVDH is subject to disciplinary action pursuant to Code section 4305,
15 subdivision (c), for its failure to notify the Board within 30 days in writing that its PIC,
16 Respondent Fong, had ceased to act in that capacity, and continued to permit the compounding or
17 dispensing of prescriptions, or furnished drugs in its pharmacy, as set forth in paragraphs 27-29.

18 **RESPONDENT SO-SHEUNG FONG, PIC**
19 **(Pharmacist License No. RPH 47613)**

20 **TENTH CAUSE FOR DISCIPLINE**

21 **(Respondent Fong: Inadequate Policies and Procedures – July 30, 2018 Inspection)**

22 39. Respondent So-Sheung Fong’s (“Respondent Fong”) Pharmacist License No. RPH
23 47613 is subject to disciplinary action pursuant to Code section 4301, subdivision (o), for
24 unprofessional conduct, in that on July 30, 2018, Respondent Fong violated or attempted to
25 violate, directly or indirectly, or assisted in or abetted the violation of or conspired to violate Title
26 16, CCR, section 1751.3, as set forth in paragraph 22, in the following respects:

27 a. Respondent Fong failed to state in the written policy and procedure regarding action
28 levels for colony-forming units (CFUs) detected during viable air and surface sampling in the

1 compounding aseptic isolator (CAI) that the pharmacy will identify the CFUs at least to the genus
2 level. Further, Respondent Fong failed to state that an investigation of cleaning will take place in
3 the event CFUs are detected, in violation of Title 16, CCR, section 1751.3, subdivision (a)(1). In
4 addition, Respondent Fong was previously cited for the violation via Citation No. CI 2017 80549,
5 as set forth in paragraph 46(e)(1-8) below.

6 b. Respondent Fong stated in the pharmacy's written policy and procedure regarding the
7 compounding, filling and labeling of sterile drug preparations that personnel with an upper
8 respiratory infection or conjunctivitis shall not work in the IV room and that personnel with an
9 infection, rash or sunburn on their hands shall not prepare sterile products. Respondent Fong
10 failed to mention or include in their policy that personnel with weeping sores, other
11 communicable diseases, cosmetics, nail polish and artificial nails shall not prepare sterile
12 products, in violation of Title 16, CCR, section 1751.3, subdivision (a)(6). Further, Respondent
13 Fong failed to include or mention in the pharmacy's policy that personnel with exposed rashes or
14 sunburns on their hands shall not prepare sterile products.

15 c. Respondent Fong failed to discuss in the pharmacy's written policy and procedure
16 regarding the compounding, filling and labeling of sterile drug preparations the labeling of sterile
17 drug preparations as it relates to the requirements in Title 16, CCR, sections 1751.2, 1707.5, and
18 1735.4, and Code section 4076, in violation of Title 16, CCR, section 1751.3, subdivision (a)(6).
19 Further, Respondent Fong was previously cited for the violation via Citation No. CI 2017 80549,
20 as set forth in paragraph 46(e)(1-8) below.

21 d. Respondent Fong discussed in the pharmacy's written environmental sampling plan
22 and procedures specific to viable air, surface and gloved fingertip sampling as well as nonviable
23 particle sampling the temperature and the number of days media fill vials shall be incubated for,
24 but failed to include the same information; i.e., temperature and number of days, media vials shall
25 be incubated for gloved fingertip sampling plates, in violation of Title 16, CCR, section 1751.3,
26 subdivision (a)(3).

27 e. Respondent Fong stated in the pharmacy's written quality assurance plan that
28 qualitative analysis for IV admixture shall be done at least annually and more often if necessary

1 and that two samples of compounded products from the pharmacy’s CAI will be sent to a
2 contracted lab annually to test for endotoxins, integrity and strength. Respondent Fong failed to
3 mention potency testing or scheduled action to be taken in the event any compounded drug
4 preparation was ever discovered to be outside minimum standards in the policy, in violation of
5 Title 16, CCR, section 1751.3, subdivision (a)(19).

6 f. Respondent Fong failed to maintain a written policy and procedure for compounded
7 sterile drug preparation stability and beyond use dating, in violation of Title 16, CCR, section
8 1751.3, subdivision (a)(5).

9 g. Respondent Fong failed to maintain a written policy and procedure for record keeping
10 requirements, in violation of Title 16, CCR, section 1751.3, subdivision (a)(20).

11 h. Respondent Fong failed to maintain a written policy and procedure for temperature
12 monitoring in compounding and controlled storage areas, in violation of Title 16, CCR, section
13 1751.3, subdivision (a)(21).

14 i. Respondent Fong failed to maintain a written policy and procedure for use of master
15 formula and compounding logs, in violation of Title 16, CCR, section 1751.3, subdivision (b)(1).

16 **ELEVENTH CAUSE FOR DISCIPLINE**

17 **(Respondent Fong: Inaccurate Beyond Use Dates for
18 Compounding Sterile Drug Preparations – May 24, 2019 Inspection)**

19 40. Respondent Fong is subject to disciplinary action pursuant to Code section 4301
20 subdivision (o), California Code of Regulations, title 16, (“CCR”) section 1735.2 (i)(2)(D) and
21 section 1751.8(d), in that during the May 24, 2019 inspection and subsequent investigation, the
22 Inspector was able to determine that, based on pharmacy law and OVDH policy, the maximum
23 allowable BUD for low risk compounded sterile drug preparations to be at 12 hours⁶. However,
24 as set forth in paragraphs 24-25, after reviewing the February 2019 compounding records, the
25 Inspector found that the 56 sterile compounded drug preparations, listed on the table below

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27 ⁶ After a review of OVDH’s Sterile Compounding policies and procedures, September
28 2018 and March 2019 Environmental Certification reports, and Master formulas, the Inspector
was able to determine the maximum allowable BUD for low risk compounded sterile drug
preparations to be at 12 hours, based on pharmacy law and OVHD policy.

1 paragraph 31, had been given incorrect beyond use dates which were longer than allowed (BUD
2 longer than 12 hours)⁷.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Respondent Fong: No Record of Beyond Use Dates for
5 Sterile Compounded Drug Preparations – May 24, 2019 Inspection)**

6 41. Respondent Fong is subject to disciplinary action pursuant to Code section 4301
7 subdivision (o), CCR sections 1735.2 (i) and 1751.8, in that during the May 24, 2019 inspection
8 and subsequent investigation, as set forth in paragraph 25, the Inspector found four sterile
9 compounded drug preparations, listed in the table below paragraph 32, had no record of the
10 assigned beyond use date (No BUD)⁸.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**

12 **(Respondent Fong: No Immediate Use Label for Medium Risk
13 Sterile Compounded Drug Preparations – May 24, 2019 Inspection)**

14 42. Respondent Fong is subject to disciplinary action pursuant to Code section 4301
15 subdivision (o), CCR sections 1735.2 (i) and 1751.8 (e), in that during the May 24, 2019
16 inspection and subsequent investigation, as set forth in paragraph 25, the Inspector found that
17 three medium risk sterile compounded drug preparations, listed in the table below paragraph 33,
18 were not labeled for immediate use only⁹.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**

20 **(Respondent Fong: No Record of Date Compounded for
21 Sterile Compounded Drug Preparations – May 24, 2019 Inspection)**

22 43. Respondent Fong is subject to disciplinary action pursuant to Code section 4301
23 subdivision (o), and CCR section 1735.3 (a)(2)(B), in that during the May 24, 2019 inspection
24 and subsequent investigation, as set forth in paragraph 26, the Inspector found sterile
25 compounded drug preparations, listed in the table below paragraph 34, had no record of the date
26 compounded.

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⁷ See “CD of Records”, File Names: “Compound Logs, Incorrect BUD Logs”.

⁸ See “CD of Records”, File Names: “Compound Logs, No BUD Logs”.

⁹ See “CD of Records”, File Names: “Compound Logs, Medium Risk Logs”.

FIFTEENTH CAUSE FOR DISCIPLINE

**(Respondent Fong: Failure to Follow Pharmacy’s Written Policies and Procedures
May 24, 2019 Inspection)**

44. Respondent Fong is subject to disciplinary action pursuant to Code section 4301, subdivision (o), for unprofessional conduct, in that on May 24, 2019, Respondent Fong violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of or conspired to violate CCR sections 1751.1 and 1751.3(a), as set forth in paragraphs 24-26 in the following respects:

a. On May 24, 2019 and in the subsequent investigation, the Inspector found that 56 sterile compounded drug preparations were given incorrect beyond use dates which were longer than allowed, as set forth in the table under paragraph 31.

b. On May 24, 2019 and in the subsequent investigation, the Inspector found that four sterile compounded drug preparations had no record of the assigned beyond use date, as set forth in the table under paragraph 32.

c. On May 24, 2019 and in the subsequent investigation, the Inspector found that three medium risk sterile compounded drug preparations were not labeled for immediate use only, as set forth in the table under paragraph 33.

d. On May 24, 2019 and in the subsequent investigation, the Inspector found that Respondent Fong did not maintain a record of the date compounded for the sterile drug preparations listed in the table under paragraph 34.

e. The Inspector found Respondent Fong did not maintain and have available the following records as required by regulation and by their policies and procedures, as set forth in paragraph 24:

- Staff training and competency;
- End product testing;
- Gloved fingertip testing;
- Media fill testing.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Respondent Fong: Failure to Notify Board Ceasing to Act as PIC)**

3 45. Respondent Fong is subject to disciplinary action pursuant to Code section 4305,
4 subdivision (a), in that she failed to notify the Board within thirty (30) days of ceasing to act as
5 the PIC at OVHD, in violation of Code section 4101, subdivision (a), as set forth in paragraphs
6 27-29.

7 **MATTERS IN AGGRAVATION**

8 46. To determine the degree of discipline to be assessed against Respondents Oak Valley
9 District Hospital and Fong, Complainant alleges as follows:

10 **Respondent Oak Valley District Hospital**

11 a. On or about April 18, 2016, the Board issued Citation and Fine No. CI 2015 69977
12 against Respondent Oak Valley District Hospital for violating Title 16, CCR, sections 1735.2,
13 subdivision (d) (failure to create master formulas prior to compounding sterile products), and
14 1735.8, subdivision (c) (failure to have or maintain a quality assurance plan to test compounded
15 sterile products for integrity, potency, quality or labeled strength). The Board ordered
16 Respondent Oak Valley District Hospital to pay fines totaling \$1,500. Respondent Oak Valley
17 District Hospital paid the citation.

18 b. On or about March 30, 2017, the Board issued Citation and Fine No. CI 2016 74623
19 against Respondent Oak Valley District Hospital for violating Title 16, CCR, section 1751.7,
20 subdivision (b). During an inspection on October 12, 2016, and a subsequent investigation, the
21 inspector found that sterile compounded prescription preparations were dispensed without
22 pharmacy personnel performing a validation process or technique using a microbiological growth
23 medium. In addition, no records of media fill testing were maintained by the pharmacy to show
24 personnel completed the tests at least every 12 months. The Board ordered Respondent Oak
25 Valley District Hospital to pay a \$1,000 fine. Respondent Oak Valley District Hospital paid the
26 citation.

27 c. On or about August 15, 2018, the Board issued Citation and Fine No. CI 2017 80548
28 against Respondent Oak Valley District Hospital for violating Title 16, CCR, sections 1751.8,

1 subdivision (e), 1751.3, subdivision (a)(1), 1735.2, subdivision (e), 1751.4, subdivision (d),
2 1735.5, subdivision (a), 1751.3, subdivision (a)(14), 1735.3, subdivision (a)(2)(G), Code section
3 4169, subdivision (a)(3), and Title 16, CCR, section 1735.3, subdivision (a)(2)(E), as set forth
4 below. The Board ordered Respondent Oak Valley District Hospital to pay a total of \$5,000 in
5 fines. Respondent Oak Valley District Hospital paid the citation.

6 1. For an unknown period of time prior to September 27, 2017, Respondent Oak
7 Valley District Hospital allowed staff to prepare an unknown number of compounded sterile
8 products (banana bags) outside of an ISO 5 environment for immediate use that were not
9 necessary where the failure to administer them could result in loss of life or intense suffering;

10 2. During an inspection on September 27, 2017, Respondent Oak Valley District
11 Hospital did not have a policy and procedure in place for describing how to respond to colony
12 forming units exceeding action levels;

13 3. On September 27, 2017, Respondent Oak Valley District Hospital failed to have a
14 master formula written for crotalidae polyvalent, banana bags, vancomycin batched with 5 mg
15 vials and for multivitamin before compounding these sterile preparations;

16 4. On September 27, 2017, Respondent Oak Valley District Hospital failed to have
17 and use a sporicidal agent to rotate with the germicidal detergent in their routine cleaning
18 procedures;

19 5. On September 27, 2017, Respondent Oak Valley District Hospital failed to have a
20 policy and procedure about annual media fills tests and assessment of staff's skills, but the testing
21 was done;

22 6. On September 27, 2017, Respondent Oak Valley District Hospital failed to use a
23 pharmacy-assigned unique reference or lot number in the compounding log for an unknown
24 number of compounded sterile products;

25 7. On 10 occurrences in July 2017, Respondent Oak Valley District Hospital failed to
26 state the corrected beyond use date on 23 vancomycin compounded sterile products labeled with a
27 14-day beyond use date when medium risk compounded sterile products were only allowed a 9-
28 day beyond use date; and

1 8. On six occurrences, July 8, 2017, July 9, 2017, July 14, 2017, July 21, 2017, July
2 22, 2017 and July 23, 2017, Respondent Oak Valley District Hospital failed to record the quantity
3 of each ingredient used to prepare vancomycin compounded sterile products.

4 **Respondent Fong**

5 d. On or about March 30, 2017, the Board issued Citation and Fine No. CI 2016 74627
6 against Respondent Fong for violating Title 16, CCR, section 1751.7, subdivision (b). During an
7 inspection on October 12, 2016, and a subsequent investigation, the inspector found that sterile
8 compounded prescription preparations were dispensed without pharmacy personnel performing a
9 validation process or technique using a microbiological growth medium. In addition, no records
10 of media fill testing were maintained by Respondent Fong to show personnel completed the tests
11 at least every 12 months. The Board ordered Respondent Fong to pay a \$500 fine. Respondent
12 Fong paid the citation.

13 e. On or about August 15, 2018, the Board issued Citation and Fine No. CI 2017 80549
14 against Respondent Fong for violating Title 16, CCR, sections 1751.8, subdivision (e), 1751.3,
15 subdivision (a)(1), 1735.2, subdivision (e), 1751.4, subdivision (d), 1735.5, subdivision (a),
16 1751.3, subdivision (a)(14), 1735.3, subdivision (a)(2)(G), Code section 4169, subdivision (a)(3),
17 and Title 16, CCR, section 1735.3, subdivision (a)(2)(E), as set forth below. The Board ordered
18 Respondent Fong to pay a total of \$5,000 in fines. Respondent Fong paid the citation.

19 1. For an unknown period of time prior to September 27, 2017, Respondent Fong
20 allowed staff to prepare an unknown number of compounded sterile products (banana bags)
21 outside of an ISO 5 environment for immediate use that were not necessary where the failure to
22 administer them could result in loss of life or intense suffering;

23 2. During an inspection on September 27, 2017, Respondent Fong did not have a
24 policy and procedure in place for describing how to respond to colony forming units exceeding
25 action levels;

26 3. On September 27, 2017, Respondent Fong failed to have a master formula written
27 for crotalidae polyvalent, banana bags, vancomycin batched with 5 mg vials and for multivitamin
28 before compounding these sterile preparations;

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 Hospital Pharmacy Permit Number HPE 37672, issued to Oak Valley District Hospital;

2. Revoking or suspending Sterile Compounding Permit Number LSE 100567, issued to Oak Valley District Hospital;

3. Revoking or suspending Pharmacist License Number RPH 47613, issued to So-Sheung Fong;

4. Prohibiting Oak Valley District Hospital from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Hospital Pharmacy Permit Number HPE 37672 is placed on probation or until Hospital Pharmacy Permit Number HPE 37672 is reinstated if Hospital Pharmacy Permit Number HPE 37672 issued to Oak Valley District Hospital is revoked;

5. Prohibiting So-Sheung Fong from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License No. RPH 47613 is placed on probation or until Pharmacist License No. RPH 47613 is reinstated if Pharmacist License No. RPH 47613 issued to So-Sheung Fong is revoked;

6. Ordering Oak Valley District Hospital and So-Sheung Fong 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

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

DATED: August 20, 2019



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

SA2018103320