

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

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

**LEV PROTAS, Respondent**

**Pharmacist License No. RPH 69028**

**Agency Case No. 7474**

**OAH No. 2024010297**

**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 September 20, 2024.

It is so ORDERED on August 21, 2024.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.  
Board President

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**Agency Case No. 7474**

**OAH No. 2024010297**

**PROPOSED DECISION**

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 3, 2024, from Sacramento, California.

Katelyn E. Docherty, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Negin Yamini, Esq., represented respondent Lev Protas, who appeared.

Evidence was received, the record closed, and the matter submitted for decision on June 3, 2024.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On July 26, 2013, the Board issued respondent pharmacist license no. RPH 69028 (license). The license will expire on March 31, 2025, unless renewed.

2. On May 28, 2024, complainant, in her official capacity, signed and thereafter filed a First Amended Accusation seeking to discipline respondent's license. Complainant alleged respondent pled guilty to felony robbery in Texas in January 2021, was arrested for unlawfully carrying a machete and violating parole in California in April 2022, and falsely denied his criminal conviction in his February 2021 and February 2023 license renewal applications. At hearing, on complainant's motion and without objection, the allegation regarding the February 2023 license renewal application was stricken from the First Amended Accusation.

Based on the above allegations, complainant alleged cause to discipline respondent's license for: (1) his criminal conviction in Texas; (2) the acts underlying his criminal conviction in Texas and his arrest in California; (3) including false information in his license renewal application; and (4) general unprofessional conduct consisting of the above allegations.

3. Respondent timely filed a Notice of Defense to the original Accusation and requested a hearing. Respondent's Notice of Defense was deemed responsive to the First Amended Accusation. (Gov. Code, § 11506, subd. (c).) The matter was set for an evidentiary hearing before an ALJ of the OAH pursuant to Government Code section 11500 et seq.

## **January 2021 Guilty Plea**

4. On January 13, 2021, in Tarrant County District Court, Case No. 1643255D, respondent pled guilty to violating Texas Penal Code section 29.02, robbery, a second degree felony (January 2021 guilty plea). The court transferred the case to the criminal impairment caseload, entered an Order of Deferred Adjudication, and placed respondent on community supervision for five years. The court permitted supervision to transfer to California where respondent lives. He is supervised by the California Department of Corrections and Rehabilitation (CDCR) on a form of parole. Upon successful completion of the supervision period, respondent can withdraw his guilty plea and the court shall dismiss the case.

5. The underlying circumstances occurred on May 18, 2020, when Fort Worth Police Department officers responded to a report of a man with a weapon who was harassing people at a gas station store. When the officers arrived at the store, they located respondent, who matched the report's description. When respondent saw them, he placed his hands on his head and sat on a curb. A butane lighter fell out of his hands. The officers observed grease or oil on the ground, inside and outside the store, a shattered glass front door, and an empty cash register drawer outside near where respondent was standing. The police officers reviewed surveillance footage that showed respondent attempting to light the grease or oil on fire, breaking the glass front door with a metal rod, and exiting the store with the cash register drawer and taking money out of it.

## **False Information in February 2021 License Renewal Application**

6. In February 2021, respondent submitted his license renewal application online. The renewal application asked, "Have you been disciplined by a public agency

or convicted of a crime since the last renewal cycle?" and referenced Business and Professions Code section 490 for the definition of "conviction." (All code sections referenced are in the Business and Professions Code, unless stated otherwise.) Under section 490, subdivision (c), a conviction includes "a plea . . . of guilty." Respondent answered, "No."

## **April 2022 Arrest**

7. On April 29, 2022, Clovis Police Department officers responded to a report of a man at a Walmart in Clovis, California, who may have concealed merchandise on his person. When the officers arrived, Walmart loss prevention pointed out respondent, who was using self-checkout. The officers asked respondent about any concealed merchandise, and he took out a hatchet and a pocket knife from his right front pocket. He consented to a weapons search. The officers located a machete on respondent's left hip, with the sheathed blade in his pants and the handle underneath his sweater.

8. Respondent explained to the officers he removed the items from their packaging so he could carry them more easily in his pockets. He admitted the hatchet, pocket knife, and machete were Walmart's property. He had not yet paid for them but was about to, at self-checkout. The officers arrested respondent for the concealed machete, under Penal Code section 21310, concealing a dirk or dagger, a felony (April 2022 arrest). Because respondent was under CDCR supervision, the officers informed CDCR what happened. CDCR authorized a parole hold on respondent. The parole hold was subsequently lifted.

## **Board's Investigation**

9. In April 2022, Board staff were notified of respondent's April 2022 arrest at Walmart. On December 27, 2022, Brynn Thompson, Board staff, investigated the arrest and prepared an investigation report. Ms. Thompson concluded respondent's conduct underlying the April 2022 arrest involved moral turpitude, dishonesty, fraud, deceit, or corruption, under section 4301, subdivision (f). She recommended respondent's license be disciplined.

10. Karla Retherford-Parreira, Pharm.D., a licensed pharmacist and a Board inspector, testified on complainant's behalf regarding a pharmacist's duties and her opinion on respondent's ability to practice. She testified a pharmacist's duties include managing the daily activities of a pharmacy, coordinating with doctors, staff, and patients, and providing prescribed medications and consultations to patients. A pharmacist has access to medication, patient information, and money. Dr. Retherford-Parreira testified a pharmacist must exercise good judgment and understand rules and regulations. Based on her review of respondent's conduct, Dr. Retherford-Parreira was concerned about his ability to practice as a pharmacist.

11. Lori Martinez, a senior administrative manager with the Board, testified. She searched the Board's records and located respondent's February 2021 renewal application. She testified the Board's records showed respondent answered "no" to the question of whether he suffered any discipline or conviction since the last renewal cycle. Ms. Martinez testified the 2021 license renewal cycle period was April 1, 2019, through March 31, 2021.

## **Respondent's Evidence**

12. Respondent explained why, in his February 2021 license renewal application, he stated he had not been convicted of a crime since his last renewal. While facing criminal charges in Texas, he was concerned how the case would affect his license. He asked his Texas criminal defense attorney, Mark D. Scott, Esq., how to properly complete the renewal application. He did not show Mr. Scott the actual application. Respondent testified Mr. Scott told him to answer no because he was not convicted. Respondent followed Mr. Scott's advice. At hearing, respondent admitted he did not read section 490's definition of "conviction." He explained he did not trust his legal comprehension and wanted to defer to a legal professional's advice.

13. Respondent admitted his January 2021 guilty plea and the circumstances underlying both his guilty plea and the April 2022 arrest. However, he described his recollection of his conduct as "blurry," as he engaged in that conduct while experiencing a manic episode due to his Bipolar I Disorder. Respondent testified the mania makes it difficult for him to later recall events. Even so, respondent acknowledged responsibility and admitted his conduct was irrational. He explained, during manic episodes, he becomes paranoid and impulsive and engages in disorganized thinking.

14. Following respondent's April 2022 arrest, he was criminally charged with concealing a dirk or dagger, a felony. The Fresno County Superior Court ordered Tamar M. Kenworthy, Psy.D., to conduct a psychological evaluation. Based on her evaluation, the court placed respondent's case on mental health diversion. Diversion on a felony charge lasts up to two years. (Pen. Code, § 1001.36, subd. (f)(1)(C)(i).) Upon respondent's successful completion of mental health diversion, the court shall dismiss the criminal case.

## **DR. KENWORTHY'S EVALUATION**

15. In July 2023, Dr. Kenworthy reviewed respondent's court records and medical records and interviewed and diagnosed him. In the interview, respondent told Dr. Kenworthy, after experiencing a manic episode in 2017, his psychiatrist, Latif Ziyar, M.D., diagnosed him with Bipolar I Disorder and prescribed medication. He admitted to Dr. Kenworthy he had been "intermittently" taking his medications before he impulsively flew to Texas in May 2020. Respondent expressed a desire to continue treatment and told Dr. Kenworthy, "I really don't want to keep going back to jail every manic episode."

16. Based on reviewing the records and interviewing respondent, Dr. Kenworthy noted:

[Respondent] has a history of mood episodes with mental health treatment dating back to 2016. He had several psychiatric hospitalizations in the past three years related to manic episodes during which he experiences [the following symptoms:] elevated mood, hypersexuality, hyper religiosity and grandiosity, excessive spending, lack of sleep, and irrational thinking and behaviors. [He] also described a history of depressive episodes characterized by suicidal ideation, lack of motivation, increased sleep, and social isolation. His symptoms meet criteria for Bipolar I Disorder, most recent episode unspecified.

17. In Dr. Kenworthy's opinion, respondent's Bipolar I Disorder was a significant factor in his conduct underlying the April 2022 arrest. She recommended

outpatient mental health services including therapy, ongoing medication management, and education on the importance of ongoing treatment compliance and monitoring of any potential misuse of prescribed medications.

### **RESPONDENT'S MENTAL HEALTH TREATMENT**

18. At hearing, respondent described his mental illness history consistently with what he told Dr. Kenworthy. He explained Bipolar I Disorder is difficult to treat because a particular medication regimen may unexpectedly become less effective. For this reason, he regularly updates Dr. Ziyar on any symptoms so Dr. Ziyar can revisit and modify his medication regimen.

19. In 2020, respondent was working as a pharmacist at the University of California, Davis, Children's Hospital. In May 2020, he began experiencing manic symptoms, such as impulsivity, paranoia, and irrational thoughts. At hearing, respondent explained he believed the symptoms returned due to his medications becoming less effective. Respondent informed Dr. Ziyar about these symptoms, and Dr. Ziyar recommended a leave of absence. Respondent followed Dr. Ziyar's advice. However, before Dr. Ziyar was able to finalize a new medication regimen, respondent impulsively flew to Texas and experienced a manic episode.

20. In 2022, respondent was working as a pharmacist-in-charge at Cardinal Health. In April 2022, he began experiencing manic symptoms again, including paranoia and impulsivity. At hearing, respondent explained he believed his symptoms were caused by his new medication regimen becoming less effective. He informed Dr. Ziyar of his symptoms, and he again recommended a leave of absence. Respondent followed Dr. Ziyar's advice. However, before Dr. Ziyar was able to finalize a new

medication regimen, respondent engaged in the conduct that resulted in the April 2022 arrest.

21. Respondent has been compliant with taking his medications since February 2021. However, because medications alone have not been reliably effective, respondent has sought additional support in conjunction with medication. Respondent participates in a peer support group through the National Alliance on Mental Illness. Additionally, as part of mental health diversion, he receives individual weekly therapy through Turning Point of Central California, Inc. (Turning Point). Turning Point updates the Fresno County Superior Court of respondent's performance in treatment. For the period March 26 through April 24, 2024, Turning Point reported respondent was meeting the requirements of his treatment plan, was actively engaging with his treatment team, and exhibited observable progress and an increasing ability to manage his symptoms.

22. Respondent testified the addition of therapy and peer support to his medication regimen has been effective. While the medications help him chemically, therapy and peer support have been teaching him about consciousness, mindfulness, and appropriate emotions and behavior. As a result, he feels he understands himself better. Respondent believes he would be able to identify manic symptoms early enough for Dr. Ziyar to modify his medications, or for Turning Point to modify his treatment plan, to prevent a manic episode.

23. Respondent testified his efforts so far have been successful, noting he has not experienced a manic episode since April 2022. Although he understands his mental illness has "no solution" or permanent cure, he is "doing everything in [his] power" to manage his symptoms. He believes he does not pose a risk to public safety because he has "never endangered [his] patients, staff, or coworkers." He plans to

continue with medication and therapy. Respondent is willing to undergo an evaluation or comply with any treatment requirements the Board deems appropriate to assure the Board he is safe to practice.

## **Analysis**

24. In January 2021, respondent pled guilty to felony robbery in Texas. His plea is a conviction within the meaning of section 490. In February 2021, respondent knowingly falsely stated he had not been convicted of any crime since his last renewal. Although he explained he followed Mr. Scott's advice, it remained respondent's responsibility to ensure he understood the laws governing his practice. Respondent's failure to do so was unprofessional. Additionally, respondent's overall conduct, underlying both the January 2021 guilty plea and the April 2022 arrest, was unbecoming of a pharmacist and constituted unprofessional conduct.

25. Respondent's January 2021 guilty plea to felony robbery is substantially related to a pharmacist's qualifications, functions, and duties because it demonstrates, to a substantial degree, his present or potential unfitness to practice in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1770, subd. (a).) A pharmacist's practice directly impacts the public's health, safety, and welfare. (*Id.* at subd. (b).) Respondent must appropriately provide prescribed medications to patients, and failing to do so risks imminent injury or death. Further, he has access to controlled substances, personal and health information, and money, and he must be able to maintain confidence and refrain from stealing. When robbery is considered in light of the nature and duties of respondent's practice, the crime has bearing on his present or potential ability to safely practice as a pharmacist.

26. The Board has adopted criteria to evaluate the rehabilitation of a licensee convicted of a crime substantially related to the qualifications, functions, and duties of licensees. The relevant criteria are: the nature and gravity of the acts or offenses; the licensee's total criminal record; the time elapsed since the commission of the acts or offenses; whether the licensee has complied with all terms of parole, probation, restitution, or any other sanctions lawfully imposed. (Cal. Code Regs., tit. 16, § 1769, subd. (c).)

27. Respondent's conduct is serious. In 2020, while experiencing a manic episode, he used a metal rod to break the front door of a gas station store, stole money from the cash register, and attempted to light the store on fire. In 2022, again while experiencing a manic episode, he concealed a machete in his clothing while shopping at Walmart. Although respondent's recollection of the events is "blurry," he accepted responsibility for his conduct. At hearing, he admitted his behavior was erratic and impulsive but did not argue his mental illness excused his actions.

28. To his credit, respondent's mental health has been improving within the last two years. He regularly updates Dr. Ziyar on how he feels and any manic symptoms. He has been compliant with taking his medications and fully participates in Turning Point's treatment plan. With medication, therapy, and peer support, respondent appears able to manage his symptoms. The absence of manic episodes since April 2022 suggests respondent's compliance with his current treatment plan has been effective thus far.

29. Overall, respondent's progress is encouraging. However, he is still under court supervision, and his improvement is recent. Historically, respondent's compliance with taking medications has been inadequate to prevent recurrence of manic episodes, during which respondent's conduct was concerning and dangerous. Nevertheless, his

progress within the last two years suggests additional time may allow for a more sustained period of mental stability such that respondent can show he is able to practice as a pharmacist safely. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate analysis of one's rehabilitation requires a period during which he is not on probation]; *In re Giddens* (1981) 30 Cal.3d 110, 116 [requiring further proof of rehabilitation during an unsupervised period].)

30. The objective of license discipline is to protect the public, not to punish the licensee. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817.) When all the evidence is considered, respondent did not prove he has been rehabilitated such that he is able to practice as a pharmacist in a manner consistent with the public health, welfare, and safety. Consequently, his license should be revoked.

## **Costs**

31. Pursuant to section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. Complainant seeks \$8,117.50 in enforcement costs. In support of her request, complainant submitted Ms. Docherty's certification of prosecution costs, including a summary of work performed and time spent by the Office of the Attorney General. Respondent did not object to the costs requested.

## **LEGAL CONCLUSIONS**

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

1. In an action to revoke or suspend a pharmacist license, complainant bears the burden to prove her case by clear and convincing evidence. (*Ettinger v. Bd.*

*of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Clear and convincing evidence requires a finding of high probability or evidence so clear as to leave no substantial doubt. It requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Super. Ct.* (2005) 130 Cal.App.4th 586, 594.)

2. Once cause for discipline is established, the licensee has the burden to prove rehabilitation, which is akin to an affirmative defense. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App.156, 164.) The licensee must prove rehabilitation by a preponderance of the evidence. "Preponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." (*People v. Condley* (1977) 69 Cal.App.3d 999, 1008.)

## **Applicable Law**

3. Every license issued by the Board, including a pharmacist license, may be suspended or revoked. (§§ 4300, subd. (a), 4032.) The Board may impose discipline for unprofessional conduct; moral turpitude, dishonesty, fraud, deceit, or corruption; knowingly making or signing a document that falsely represents the existence or nonexistence of a fact; or a conviction of a crime substantially related to the qualifications, functions, and duties of a licensee. (§§ 490, 4301, subds. (f), (g), (l).)

4. A licensee whose license has been revoked or suspended shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee. If the license is suspended, the prohibition period shall not to exceed five years. If the license is revoked, the prohibition period shall continue indefinitely until the license is issued or reinstated. (§ 4307, subds. (a)(1), (2).)

## Causes for Discipline

5. Complainant established, by clear and convincing evidence, respondent's January 2021 guilty plea to felony robbery and the underlying conduct, his conduct underlying the April 2022 arrest, and his false answer in his February 2021 license renewal application, constitute unprofessional conduct. Thus, cause exists to discipline respondent's pharmacist license pursuant to section 4301.

6. Complainant established, by clear and convincing evidence, respondent committed an act involving moral turpitude by his January 2021 conviction of felony robbery. (*People v. Brown* (1985) 169 Cal.App.3d 800, 806 ["Robbery is one of those offenses where conviction alone compels the conclusion that moral turpitude was involved"].) Thus, cause exists to discipline respondent's pharmacist license pursuant to section 4301, subdivision (f).

Complainant failed to establish, by clear and convincing evidence, the acts underlying respondent's April 2022 arrest involved moral turpitude, dishonesty, fraud, deceit, or corruption. Although complainant alleged respondent was suspected of concealing merchandise, she did not prove by clear and convincing evidence that respondent stole or was attempting to steal. Furthermore, the police arrested respondent not for theft, but for concealing a machete and violating parole. Complainant did not establish how those acts constituted moral turpitude, dishonesty, fraud, deceit, or corruption. Thus, cause does not exist to discipline respondent's license under section 4301, subdivision (f), based on his conduct underlying the April 2022 arrest.

7. Complainant established, by clear and convincing evidence, respondent knowingly falsely stated in his February 2021 license renewal application he had not

been convicted of any crime since his last renewal. Thus, cause exists to discipline respondent's pharmacist license pursuant to section 4301, subdivision (g).

8. The crime of robbery has bearing on respondent's practice as a pharmacist, especially in light of his access to medications, personal information, health information, and money. Consequently, complainant established, by clear and convincing evidence, his January 2021 guilty plea to felony robbery, a conviction under section 490, is substantially related to his qualifications, functions, and duties. Thus, cause exists to discipline respondent's pharmacist license pursuant to sections 490 and 4301, subdivision (l).

### **Appropriate Discipline**

9. When all the evidence is considered, respondent's pharmacist license should be revoked to protect the public. Upon revocation, respondent is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee, indefinitely until the license is issued or reinstated. (§ 4307, subd. (a)(2).) Respondent will be eligible to petition the Board to reinstate his license three years after the effective date of this decision. (§ 4309, subd. (a).)

### **Costs**

10. The Board may request the ALJ to direct a respondent found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. The relevant factors are:

- (1) whether respondent succeeded to get charges dismissed or reduce the penalty;
- (2) whether respondent had a subjective good faith belief in his position's merits;
- (3) whether respondent raised a colorable challenge to the proposed discipline; and
- (4) whether respondent has the financial ability to make payments.

11. Here, respondent did not get charges dismissed, reduce the penalty, raise a colorable challenge to the proposed discipline, or provide evidence of an inability to pay. Although he had a good faith belief in the merits of his position, upon consideration of the *Zuckerman* factors collectively, costs in the amount of \$8,117.50 shall be ordered. Respondent must repay these costs if and when he successfully reinstates his pharmacist license or obtains a new license with the Board.

## **ORDER**

Pharmacist license no. RPH 69028 issued to respondent Lev Protas is revoked. Respondent shall relinquish his license, including any indicia of licensure issued by the Board, to the Board within 10 days of the effective date of this Decision. Respondent is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee, indefinitely until his pharmacist license is issued or reinstated. Respondent may not reapply or petition the Board for reinstatement of his revoked license for three years from the effective date of this Decision.

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As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$8,117.50. Said amount shall be paid in full prior to the reinstatement of his license unless otherwise ordered by the Board.

DATE: June 27, 2024



PATRICE DE GUZMAN HUBER

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 7474

13 **LEV PROTAS**  
14 **8665 N. Cedar Avenue, Unit 112**  
**Fresno, CA 93720**

**FIRST AMENDED ACCUSATION**

15 **Pharmacist License No. RPH 69028**

16 Respondent.  
17

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19  
20  
21 **PARTIES**

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

25 2. On or about July 26, 2013, the Board of Pharmacy issued Pharmacist License  
26 Number RPH 69028 to Lev Protas (Respondent). The Pharmacist License was in full force and  
27 effect at all times relevant to the charges brought herein and will expire on March 31, 2025,  
28 unless renewed.

**JURISDICTION**

1  
2           3.     This First Amended Accusation is brought before the Board of Pharmacy (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5           4.     Code section 4011 provides that the Board shall administer and enforce both the  
6 Pharmacy Law [Bus. & Prof. Code §§ 4000, *et seq.*] and the Uniform Controlled Substances Act  
7 [Health & Safety Code §§ 11000, *et seq.*].

8           5.     Code section 4300 states, in pertinent part:

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

10                   (b) The board shall discipline the holder of any license issued by the board,  
11 whose default has been entered or whose case has been heard by the board and found  
12 guilty, by any of the following methods:

12                           (1) Suspending judgment.

13                           (2) Placing him or her upon probation.

14                           (3) Suspending his or her right to practice for a period not exceeding one year.

15                           (4) Revoking his or her license.

16                           (5) Taking any other action in relation to disciplining him or her as the board in  
17 its discretion may deem proper. . . .

18                           (e) The proceedings under this article shall be conducted in accordance with  
19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
20 Government Code, and the board shall have all the powers granted therein. The  
21 action shall be final, except that the propriety of the action is subject to review by the  
22 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

23           6.     Code section 4300.1, states:

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

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28     ///

**STATUTORY PROVISIONS**

7. Code section 490 states, in pertinent part:

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

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

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

...

8. Section 4301 of the Code states, in pertinent part:

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

...

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

(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.

...

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

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

7 **COST RECOVERY**

8 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licensee found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case, with failure of the licensee to comply subjecting the license to not being  
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
13 included in a stipulated settlement.

14 **FACTUAL ALLEGATIONS**

15 10. On or about January 13, 2021, in the criminal matter titled *The State of Texas v. Lev*  
16 *Protas*, Tarrant County District Court No. 1, Court Case Number 1643255D, Respondent pled  
17 guilty to a 2<sup>nd</sup> degree felony violation of Texas Penal Code section 29.03 (robbery). The court  
18 entered an order of deferred adjudication, which ordered five year(s) of community supervision,  
19 restitution in the amount of \$2,300.00, Respondent be placed on the Mental Impairment caseload,  
20 and that Respondent be transferred to California and admitted to a mental health treatment  
21 facility. The circumstances are as follows: On or around May 18, 2020, officers with the Fort  
22 Worth Police Department responded to a report of a male with a weapon harassing customers at a  
23 gas station in Fort Worth, Texas. When the officers pulled into the parking lot of the gas station,  
24 they observed the suspect, later identified as Respondent, turn around towards them and place his  
25 hands on his head and sit on the curb. When Respondent sat down on the curb, an officer  
26 observed a large butane lighter fall out of Respondent's hands. Additionally, officers observed the  
27 glass door of the gas station was completely shattered and oil or grease was all over the inside and  
28 outside of the store near where Respondent was standing, a cash register drawer was located

1 outside the store on the pavement with no cash inside. The officer observed surveillance video  
2 from the store and observed Respondent attempting to use the lighter to light the oil and grease on  
3 fire that he had spread on the ground. The officer observed another video that showed Respondent  
4 breaking the glass to the door of the gas station using a large metal rod and then coming outside  
5 with the cash register drawer and taking the money out of the cash register. Respondent was  
6 arrested for violation of Texas Penal Code sections 29.03 (Aggravated Robbery) and 120  
7 (Robbery).

8 11. On or about April 29, 2022, at approximately 11:21 a.m., an officer from the Clovis  
9 Police Department responded to a report of possible petty theft at the Walmart store in Clovis,  
10 California. The officer made contact with the suspect, later identified as Respondent, and  
11 informed him that store personnel believed that Respondent had possibly concealed merchandise  
12 in the store. Respondent began pulling items out of his front pocket, including a hatchet and  
13 pocketknife, and during a search of Respondent's person, the officer also found a large 16-inch  
14 machete in a sheath on Respondent's left hip, looped through his belt. The machete had been  
15 concealed underneath Respondent's clothing. Respondent claimed that he had been walking  
16 around the store with the hatchet and machete and since he was carrying a lot of things he decided  
17 to go to the restroom, take the items out of the packaging and put them on his person.  
18 Respondent claimed he was still going to pay for the items. Respondent was arrested for  
19 violation of Penal Code sections 21310 (concealed a dirk or dagger) and 3056 (parole violation).

20  
21 **FIRST CAUSE FOR DISCIPLINE**  
22 **(Conviction of Substantially Related Crime)**

23 12. Respondent is subject to disciplinary action under Code sections 490 and 4301,  
24 subdivision (I), in that he was convicted of a crime that is substantially related to the functions,  
25 qualifications, and duties of a pharmacist, as further set forth in paragraph 10 above.

26 ///

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28 ///



1           2.     Ordering Lev Protas to pay the Board of Pharmacy the reasonable costs of the  
2 investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3; and,

4           3.     Prohibiting Lev Protas from serving as a manager, administrator, owner, member,  
5 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number  
6 RPH 69028 is placed on probation or until Pharmacist License Number RPH 69028 is reinstated  
7 if Pharmacist License Number RPH 69028 issued to Lev Protas, is revoked;

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

9  
10  
11 DATED: 5/28/2024

Sodergren,  
Anne@DCA

Digitally signed by  
Sodergren, Anne@DCA  
Date: 2024.05.28  
08:30:27 -07'00'

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

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