

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

**In the Matter of the Petition for Early Termination of
Probation of:**

LUKE DUVAL VU, Petitioner

Agency Case No. 6796

OAH No. 2024120338

PROPOSED DECISION

This matter was heard before a quorum of the Disciplinary Petition Committee (Committee) of the Board of Pharmacy (Board), Department of Consumer Affairs, under Business and Professions Code section 4309, subdivision (c), by videoconference on December 18, 2024. Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided, assisted, and advised the Committee in the conduct of the hearing under Government Code section 11517, subdivision (b)(1).

Nicole R. Trama, Deputy Attorney General, represented the Attorney General of the State of California pursuant to Government Code section 11522.

Petitioner Luke Duval Vu appeared and represented himself.

Evidence was received, the record closed, and the matter submitted for decision on December 18, 2024.

FACTUAL FINDINGS

Background

1. On March 26, 2003, the Board issued petitioner Pharmacist License No. RPH 54277. The license will expire on October 31, 2026, unless renewed.

SECOND AMENDED ACCUSATION

2. On May 7, 2021, complainant Anne Sodergren, Executive Officer of the Board, in her official capacity, signed and thereafter filed a Second Amended Accusation against petitioner's license. Complainant alleged grounds to discipline his license based on his acting as an unregistered Pharmacist-in-Charge (PIC) and fraudulently dispensing prescriptions not approved by a patient.

3. Specifically, the Second Amended Accusation alleged the following facts. Petitioner's spouse, Jacquelyn Tran, Pharm.D., owned and was the registered PIC of Ten Pharmacy. In February 2020, the Board received a complaint that Dr. Tran was "never there" at Ten Pharmacy and that petitioner performed the duties of a PIC in her absence. The Board's investigation confirmed the complaint and also revealed that petitioner, acting as PIC, dispensed or oversaw the dispensing of compounded prescriptions without testing them to ensure their integrity, potency, quality, or labeled strength.

4. In June 2020, C.K., petitioner's former employee at his pharmacy, Drug Depot, complained to the Board that petitioner was fraudulently filling prescriptions

for her and billing her insurance company. C.K. told the Board that after petitioner terminated her, he continued to fraudulently fill prescriptions for her. The Board's investigation revealed petitioner processed and billed prescriptions to C.K.'s insurance company without her approval.

STIPULATED SETTLEMENT AND PROBATIONARY LICENSE

5. Effective January 5, 2022, petitioner entered into a Stipulated Settlement and Disciplinary Order (Stipulated Settlement) with the Board. Petitioner admitted the truth of each and every charge and allegation set forth in the Second Amended Accusation and agreed they established cause to discipline his license. Pursuant to the Stipulated Settlement, the Board revoked petitioner's license, immediately stayed that revocation, and placed the license on probation for five years. The terms and conditions of probation include submission of quarterly reports, practice as a pharmacist for 80 hours per month, remedial education, an ethics course, a prohibition against ownership or management of licensed premises, payment of probation monitoring costs, and reimbursement of the Board's costs of investigation and enforcement in the amount of \$25,000.

Petition for Early Termination of Probation

6. On September 12, 2024, petitioner signed and thereafter filed with the Board his Petition for Early Termination of Probation. In support of his Petition, petitioner submitted his written statement, continuing education transcripts, and support letters. In his Petition and at hearing, petitioner explained the circumstances underlying his license discipline, his rehabilitation efforts since, and the reasons he is seeking early termination of probation.

7. Petitioner has not previously applied for termination of his probation. He has completed three years of probation and has approximately two years remaining. Petitioner is in compliance with the terms and conditions of probation. He has timely submitted all quarterly reports, practices as a pharmacist for 80 hours per month, is in the process of completing remedial education, has completed an ethics course, and has no ownership or management of a licensed premises. Petitioner is also current on paying the probation monitoring costs and has a remaining reimbursement balance of \$6,110.96.

8. Petitioner acknowledged his wrongdoing. He explained he felt comfortable assuming the duties of a PIC at Ten Pharmacy because he had been practicing as the PIC of his pharmacy, Drug Depot. Petitioner assumed the PIC duties at Ten Pharmacy to help Dr. Tran, who was not well physically at the time. Petitioner explained his misconduct was overall financially motivated. Operating an independent pharmacy was stressful, and he was "driven by profit" to do anything to "keep the lights on" and make a living. Petitioner expressed remorse for his poor judgment.

9. Petitioner realized "life is not all about money; it is about happiness" when his best friend committed suicide shortly after probation began. Petitioner was the one who identified his best friend's body. Being motivated by profit and being disciplined as a result, in addition to the loss of his best friend, "brought [petitioner] back to [his] core values." He was reminded of the reason he pursued practice as a pharmacist: to serve his community. He began asking himself these questions: "How can I be a better pharmacist? How can I contribute to society?" To help answer these questions, petitioner volunteers with Do For The World, a non-profit organization supporting orphanages in Vietnam. He finds this work "humbling" as it has "taught [him] the importance of integrity[,] compassion[,] and [] second chances."

10. Moving forward, petitioner would like to continue on the trajectory of serving his community. He has closed Drug Depot and has no plans to own an independent pharmacy in the future. He currently practices as a pharmacist at Tri Tech Rx. Petitioner finds educating his patients rewarding. Eventually, he would like more opportunities to educate others and is considering in the future becoming a Board inspector or pursuing a second career as an attorney.

11. In his written statement, petitioner explained he is seeking early termination of probation for his children, to set an example of second chances and redemption. He stated:

Requesting early termination is not just about personal freedom for me. It holds deep significance for my role as a father. I have four beautiful daughters who look up to me every day. The idea that I can look into their eyes with pride, knowing that I have moved forward with my life, is incredibly important to me. Being granted early termination would allow me to fully reintegrate into society, and it would enable me to be the best father, role model, and provider for them. I want to show my daughters that no matter the challenges we face, we can learn [to] overcome them[] and learn from any mistakes and emerge stronger.

SUPPORT LETTERS

12. Sara Mikhaeli, Pharm.D., wrote a support letter. She is a pharmacist at Tri Tech Rx and has worked alongside petitioner since April 2024. Dr. Mikhaeli describes petitioner as “exceptional” in filling prescriptions and patient consultations. She praises

petitioner's candor about his wrongdoing and desire to make amends by serving his community.

13. Rick Van Tran, D.D.S., wrote a support letter. He has been friends with petitioner for over 25 years and knows about his license discipline. Petitioner has filled prescriptions for Dr. Tran's patients. Dr. Tran considers petitioner "an invaluable resource in ensuring optimal outcomes" for his patients. He praised petitioner's integrity and compassion.

14. Jan Nguyen, Pharm.D., wrote a support letter. She has known petitioner for over 15 years. Dr. Nguyen knows about his license discipline but not the "details of the mishaps with his business." She praises petitioner's service to his community, particularly by donating food and supplies to the homeless and supporting disaster relief efforts.

15. Mary Tran wrote a support letter. She has known petitioner for over 15 years and knows about his license discipline. Ms. Tran has observed petitioner's commitment to serving his community. She describes him as an asset to his patients and community.

16. Vincent Dagon, O.D., wrote a support letter. He has been friends with petitioner for over 10 years and knows about his license discipline. Since probation began, Dr. Dagon has observed petitioner's "maturity, responsibility, and [] strong dedication to be a better pharmacist." He believes petitioner "will continue on this positive path" even without Board supervision.

LEGAL CONCLUSIONS

Timeliness of Petition and Review of Decision

1. A pharmacist whose license has been placed on probation for a period of three years or more may petition the Board for early termination of probation after at least two years have passed since the effective date of such discipline. (Bus. & Prof. Code, § 4309, subd. (a)(2).) Here, petitioner filed his Petition in September 2024, over two years after probation began. His Petition is therefore timely.

2. The Petition may be heard by a committee of the Board sitting with an ALJ. Where the Petition is thus heard, the decision shall be subject to review by the Board under Government Code section 11517. (Bus. & Prof. Code, § 4309, subd. (c).) Here, the decision is subject to review by the Board.

Propriety of Early Termination of Probation

3. Petitioner has the burden to prove by clear and convincing evidence he has rehabilitated himself and is entitled to early termination of his probation. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084.) Petitioner must present strong proof of rehabilitation, sufficient to overcome the former adverse determination. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

4. In considering a petition for early termination of probation, the Board may assess the following relevant factors: (1) the offense for which petitioner was disciplined; (2) petitioner's activities since the disciplinary action was taken; (3) petitioner's general reputation for truth and professional responsibility; and (4) petitioner's rehabilitative efforts. (Bus. & Prof. Code, § 4309, subd. (d).)

5. Petitioner's misconduct is serious. He undertook the duties of a PIC at Ten Pharmacy without registering as its PIC. By doing so, he disregarded the safeguards to assure the public it is being served by a vetted PIC. Further, petitioner's fraudulent dispensing and billing of medications demonstrated he prioritized financial gain over public protection. However, petitioner's wrongdoing occurred over four years ago, and he has not engaged in misconduct since.

6. To his credit, petitioner accepted responsibility and expressed remorse for his wrongdoing. He has reflected on his motivations and realized he was "driven by profit." Probation, along with the death of his best friend, reminded petitioner that he entered this profession to serve his community. To that end, he volunteers at a non-profit supporting orphans and donates time, food, and resources to the unhoused. Petitioner is motivated to set an example for his children that there is opportunity for a second chance and redemption.

7. Moreover, petitioner has been fully compliant with the terms of probation, with the exception of full reimbursement of the Board's costs. He has also been practicing as a pharmacist, without incident, and his colleagues and friends consider him a competent pharmacist who serves his community. Petitioner's diligent compliance with probation and safe practice thus far are commendable. Clear and convincing evidence demonstrates he is able to practice in a manner consistent with the public health, safety, and welfare. Board monitoring is no longer necessary to protect the public and would be unduly punitive. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817 [the purpose of license discipline is public protection, not punishment].) When all the evidence is considered, the Petition should be granted. As a condition precedent to probation termination, petitioner shall pay in full the remaining balance of the Board's costs.

ORDER

On February 7, 2025, the Board of Pharmacy, Department of Consumer Affairs, adopted the attached Decision, which reflects the Committee's recommendation, as its own.

The Petition for Early Termination of Probation of Luke Duval Vu is GRANTED. As a CONDITION PRECEDENT to probation termination, petitioner shall pay in full the remaining balance of the Board's costs of investigation and enforcement. Once such condition precedent is satisfied, probation shall be terminated.

This Decision shall become effective at 5:00 p.m. on March 20, 2025.

It is so ORDERED on February 18, 2025.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**TEN PHARMACY INC. DBA TEN PHARMACY,
JACQUELINE DUVAL VU,
Permit No. PHY 53619,**

and

**JACQUELINE DUVAL VU,
Pharmacist No. RPH 56257,**

and

**LUKE DUVAL VU,
Pharmacist No. RPH 54277,**

and

**DRUG DEPOT PHARMACY INC.
Permit No. PHY 50418,**

Respondents.

Agency Case No. 6796

OAH No. 2020060475

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 January 5, 2022.

It is so ORDERED on December 6, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 KIM KASRELIOVICH
Supervising Deputy Attorney General
3 KEVIN RIGLEY
Deputy Attorney General
4 State Bar No. 131800
MICHAEL YI
5 Deputy Attorney General
State Bar No. 217174
6 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
7 Telephone: (213) 269-6483
Facsimile: (916) 731-2126
8 E-mail: Michael.Yi@doj.ca.gov
Attorneys for Complainant

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

12
13 In the Matter of the Accusation Against:

Case No. 6796

14 **TEN PHARMACY INC. DBA TEN**
15 **PHARMACY, LUKE DUVAL VU**
16 **750 Long Beach Boulevard, Suite 1**
Long Beach, CA 90813

OAH No. 2020060475

17 **Permit No. PHY 53619,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
LUKE DUVAL VU, PHARMACIST
LICENSE NO. RPH 54277

18 **and**

19 **JACQUELINE DUVAL VU**
20 **960 N. Tustin Street, Suite 388**
Orange, CA 92867

21 **Pharmacist No. RPH 56257,**

22 **and**

23 **LUKE DUVAL VU**
24 **960 N. Tustin Street, Suite 388**
Orange, CA 92867

25 **Pharmacist No. RPH 54277,**

26 **and**

1 **DRUG DEPOT PHARMACY INC.**
2 **999 N. Tustin Avenue, Suite 12**
3 **Santa Ana, CA 92705**

4 **Permit No. PHY 50418,**

5 Respondents.

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

8 **PARTIES**

9 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
10 (Board). She brought this action solely in her official capacity and is represented in this matter by
11 Rob Bonta, Attorney General of the State of California, by Michael Yi and Kevin Rigley, Deputy
12 Attorneys General.

13 2. Luke Duval Vu (Respondent) is represented in this proceeding by attorney Ivan
14 Petrzelka, whose mailing address is: P.O. Box 552, Red Bluff, CA 96080.

15 3. On March 26, 2003, the Board issued Pharmacist Number RPH 54277 to Luke Duval
16 Vu. The Pharmacist License was in full force and effect at all times relevant to the charges
17 brought in Second Amended Accusation Number 6796, and will expire on October 31, 2022,
18 unless renewed.

19 **JURISDICTION**

20 4. Second Amended Accusation Number 6796 was filed before the Board, and is
21 currently pending against Respondent. The Second Amended Accusation and all other statutorily
22 required documents were properly served on Respondent on May 10, 2021. Respondent timely
23 filed his Notice of Defense contesting the Second Amended Accusation. A copy of Second
24 Amended Accusation Number 6796 is attached as Exhibit A and incorporated by reference.

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1 **ADVISEMENT AND WAIVERS**

2 5. Respondent has carefully read, fully discussed with counsel, and understands the
3 charges and allegations in Second Amended Accusation Number 6796. Respondent has also
4 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
5 Surrender of License and Order.

6 6. Respondent is fully aware of his legal rights in this matter, including the right to a
7 hearing on the charges and allegations in the Second Amended Accusation; the right to confront
8 and cross-examine the witnesses against him; the right to present evidence and to testify on his
9 own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
10 production of documents; the right to reconsideration and court review of an adverse decision;
11 and all other rights accorded by the California Administrative Procedure Act and other applicable
12 laws.

13 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
14 every right set forth above.

15 **CULPABILITY**

16 8. Respondent understands and agrees that the charges and allegations in Second
17 Amended Accusation Number 6796, if proven at a hearing, constitute cause for imposing
18 discipline upon his Pharmacist License.

19 9. For the purpose of resolving Second Amended Accusation Number 6796 without the
20 expense and uncertainty of further proceedings, Respondent agrees that, at a hearing,
21 Complainant could establish a factual basis for the charges in the Accusation, and Respondent
22 hereby give up his right to contest those charges.

23 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
24 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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CONTINGENCY

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2 11. This stipulation shall be subject to approval by the Board. Respondent understands
3 and agrees that counsel for Complainant and the staff of the Board may communicate directly
4 with the Board regarding this stipulation and settlement, without notice to or participation by
5 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
6 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
8 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
10 be disqualified from further action by having considered this matter.

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

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

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

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist Number RPH 54277 issued to Luke Duval Vu
3 is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5)
4 years on the following terms and conditions:

5 **1. Obey All Laws**

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

7 Respondent shall report any of the following occurrences to the Board, in writing, within
8 seventy-two (72) hours of such occurrence:

9 an arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
11 substances laws

12 a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal
13 criminal proceeding to any criminal complaint, information or indictment

14 a conviction of any crime

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

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

21 **2. Report to the Board**

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

26 Failure to submit timely reports in a form as directed shall be considered a violation of
27 probation. Any period(s) of delinquency in submission of reports as directed may be added to the
28 total period of probation. Moreover, if the final probation report is not made as directed,

1 probation shall be automatically extended until such time as the final report is made and accepted
2 by the Board.

3 **3. Interview with the Board**

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

9 **4. Cooperate with Board Staff**

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

16 **5. Continuing Education**

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

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

20 During the period of probation, Respondent shall notify all present and prospective
21 employers of the decision in case number 6796, and the terms, conditions and restrictions
22 imposed on Respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
24 undertaking any new employment, Respondent shall report to the Board in writing the name,
25 physical address, and mailing address of each of his employer(s), and the name(s) and telephone
26 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated
27 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work
28 schedule, if known. Respondent shall also include the reason(s) for leaving the prior

1 employment. Respondent shall sign and return to the Board a written consent authorizing the
2 Board or its designee to communicate with all of Respondent's employer(s) and supervisor(s),
3 and authorizing those employer(s) or supervisor(s) to communicate with the Board or its
4 designee, concerning Respondent's work status, performance, and monitoring. Failure to comply
5 with the requirements or deadlines of this condition shall be considered a violation of probation.

6 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
7 respondent undertaking any new employment, Respondent shall cause (a) his direct supervisor,
8 (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
9 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the
10 Board in writing acknowledging that the listed individual(s) has/have read the decision in case
11 number 6796, and terms and conditions imposed thereby. If one person serves in more than one
12 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be Respondent's
13 responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the
14 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
15 of probation, Respondent shall cause the person(s) taking over the role(s) to report to the Board in
16 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
17 in case number 6796, and the terms and conditions imposed thereby.

18 If Respondent works for, or is employed by or through an employment service, Respondent
19 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board
20 of the decision in case number 6796, and the terms and conditions imposed thereby in advance of
21 Respondent commencing work at such licensed entity. A record of this notification must be
22 provided to the Board upon request.

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

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

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

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

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

11 Failure to timely notify the Board of any change in employer, name, address, or phone
12 number shall be considered a violation of probation.

13 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

14 During the period of probation, Respondent shall not supervise any intern pharmacist, be
15 the pharmacist-in-charge, designated representative-in-charge, responsible manager or other
16 compliance supervisor of any entity licensed by the Board, nor serve as a consultant. Assumption
17 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

18 **9. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, Respondent shall be jointly
20 and severally responsible with Respondent Jacqueline Duval Vu to pay to the Board its costs of
21 investigation and prosecution in the amount of \$25,000. Respondent shall be permitted to pay
22 these costs in a payment plan approved by the Board or its designee, so long as full payment is
23 completed no later than one (1) year prior to the end date of probation.

24 **10. Probation Monitoring Costs**

25 Respondent shall pay any costs associated with probation monitoring as determined by the
26 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
27 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
28 shall be considered a violation of probation.

1 **11. Status of License**

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

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

10 **12. License Surrender While on Suspension**

11 Following the effective date of this decision, should Respondent cease practice due to
12 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
13 Respondent may relinquish his license, including any indicia of licensure issued by the Board,
14 along with a request to surrender the license. The Board or its designee shall have the discretion
15 whether to accept the surrender or take any other action it deems appropriate and reasonable.
16 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to
17 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
18 become a part of Respondent’s license history with the Board.

19 Upon acceptance of the surrender, Respondent shall relinquish his pocket and/or wall
20 license, including any indicia of licensure not previously provided to the Board within ten (10)
21 days of notification by the Board that the surrender is accepted if not already provided.
22 Respondent may not reapply for any license from the Board for three (3) years from the effective
23 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
24 of the date the application for that license is submitted to the Board, including any outstanding
25 costs.

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

2 Except during periods of suspension, Respondent shall, at all times while on probation, be
3 employed as a pharmacist in California for a minimum of 80 hours per calendar month. Any
4 month during which this minimum is not met shall extend the period of probation by one month.
5 During any such period of insufficient employment, Respondent must nonetheless comply with
6 all terms and conditions of probation, unless he receives a waiver in writing from the Board or its
7 designee.

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

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

21 **14. Violation of Probation**

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

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1 If Respondent violates probation in any respect, the Board, after giving Respondent notice
2 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
3 was stayed. If a petition to revoke probation or an accusation is filed against Respondent during
4 probation, or the preparation of an accusation or petition to revoke probation is requested from
5 the Office of the Attorney General, the Board shall have continuing jurisdiction and the period of
6 probation shall be automatically extended until the petition to revoke probation or accusation is
7 heard and decided.

8 **15. Completion of Probation**

9 Upon written notice by the Board or its designee indicating successful completion of
10 probation, Respondent's license will be fully restored.

11 **16. Remedial Education**

12 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
13 Board or its designee, for prior approval, an appropriate program of remedial education related to
14 the violations charged in the Second Amended Accusation. The program of remedial education
15 shall consist of at least 10 hours per year of probation, which shall be completed at Respondent's
16 own expense. 50% of the total hours must be live webinar/in-person training. All remedial
17 education shall be in addition to, and shall not be credited toward, continuing education (CE)
18 courses used for license renewal purposes for pharmacists.

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order, and have fully discussed it with my attorney, Ivan Petrzelka. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____
LUKE DUVAL VU
Respondent

I have read and fully discussed with Respondent Luke Duval Vu, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____
IVAN PETRZELKA
Attorney for Respondent


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ACCEPTANCE

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DATED: 11/1/2021 
LUKE DUVAL VU
Respondent

I have read and fully discussed with Respondent Luke Duval Vu, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: November 1, 2021 
IVAN PETRZELKA
Attorney for Respondent

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ENDORSEMENT

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

DATED: November ____, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
KIM KASRELIOVICH
Supervising Deputy Attorney General
KEVIN RIGLEY
Deputy Attorney General

MICHAEL YI
Deputy Attorney General
Attorneys for Complainant

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ENDORSEMENT

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

DATED: November 1, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
KIM KASRELIOVICH
Supervising Deputy Attorney General
KEVIN RIGLEY
Deputy Attorney General



MICHAEL YI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 6796

1 MATTHEW RODRIQUEZ
Acting Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 DIANN SOKOLOFF
Supervising Deputy Attorney General
4 KEVIN RIGLEY
Deputy Attorney General
5 State Bar No. 131800
MICHAEL YI
6 Deputy Attorney General
State Bar No. 217174
7 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
8 Telephone: (213) 269-6483
Facsimile: (916) 731-2126
9 E-mail: Michael.Yi@doj.ca.gov
Attorneys for Complainant

11 **BEFORE THE**
12 **BOARD OF PHARMACY**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

15 In the Matter of the Accusation Against:

16 **TEN PHARMACY INC. DBA TEN**
17 **PHARMACY, JACQUELINE DUVAL VU**
18 **750 Long Beach Boulevard, Suite 1**
19 **Long Beach, CA 90813**

20 **Permit No. PHY 53619,**

21 **and**

22 **JACQUELINE DUVAL VU**
23 **960 N. Tustin Street, Suite 388**
24 **Orange, CA 92867**

25 **Pharmacist No. RPH 56257,**

26 **and**

27 **LUKE DUVAL VU**
28 **960 N. Tustin Street, Suite 388**
Orange, CA 92867

Pharmacist No. RPH 54277,

and

Case No. 6796

OAH No. 2020060475

SECOND AMENDED ACCUSATION

1 **DRUG DEPOT PHARMACY INC.**
2 **999 N. Tustin Avenue, Suite 12**
3 **Santa Ana, CA 92705**

4 **Permit No. PHY 50418,**

5 Respondents.

6 **PARTIES**

7 1. Anne Sodergren (Complainant) brings this Second Amended Accusation solely in her
8 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
9 Consumer Affairs.

10 2. On October 30, 2015, the Board issued Permit Number PHY 53619 to Ten Pharmacy
11 Inc. dba Ten Pharmacy, Jacqueline Duval Vu (“Respondent Ten Pharmacy” or “the pharmacy”).
12 Jacqueline Duval Vu is and has been the Chief Executive Officer, President, 100% shareholder,
13 Secretary, Treasurer/Chief Financial Officer and Director of Respondent Ten Pharmacy since
14 October 30, 2015. The Permit was in full force and effect at all times relevant to the charges
15 brought in this Second Amended Accusation and expired on October 1, 2020.

16 3. On October 1, 2004, the Board issued Pharmacist Number RPH 56257 to Jacqueline
17 Duval Vu (“Respondent Jacqueline Vu”). The Pharmacist License was in full force and effect at
18 all times relevant to the charges brought in this Second Amended Accusation and will expire on
19 December 31, 2021, unless renewed. Respondent Jacqueline Vu is and has been the Pharmacist-
20 in-Charge (PIC) of the pharmacy since October 30, 2015.

21 4. On March 26, 2003, the Board issued Pharmacist Number RPH 54277 to Luke Duval
22 Vu (“Respondent Luke Vu”). The Pharmacist License was in full force and effect at all times
23 relevant to the charges brought in this Second Amended Accusation and will expire on October
24 31, 2022, unless renewed.

25 5. On November 10, 2010, the Board issued Permit Number PHY 50418 to Drug Depot
26 Pharmacy Inc. (“Respondent Drug Depot”). Luke Duval Vu is and has been the 100%
27 shareholder, President and Secretary of Respondent Drug Depot since October 6, 2012. Luke
28 Duval Vu is and has been the Pharmacist-in-Charge of Respondent Drug Depot since November

1 6, 2012. The Permit was in full force and effect at all times relevant to the charges brought in this
2 Second Amended Accusation and will expire on November 1, 2021, unless renewed.

3 **JURISDICTION**

4 6. This Second Amended Accusation is brought before the Board, under the authority of
5 the following laws. All section references are to the Business and Professions Code unless
6 otherwise indicated.

7 7. Section 4300 provides that every license issued by the Board is subject to discipline,
8 including suspension or revocation.

9 8. Section 4300.1 states:

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

16 9. Section 4302 states:

17 The board may deny, suspend, or revoke any license where conditions exist in
18 relation to any person holding 10 percent or more of the ownership interest or where
19 conditions exist in relation to any officer, director or other person with management
20 or control of the license that would constitute grounds for disciplinary action against a
21 licensee.

22 **STATUTORY PROVISIONS**

23 10. Section 4036.5 states: “‘Pharmacist-in-charge’ means a pharmacist proposed by a
24 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
25 pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice
26 of pharmacy.”

27 11. Section 4081, subdivision (a), states:

28 All records of manufacture and of sale, acquisition, receipt, shipment, or
disposition of dangerous drugs or dangerous devices shall be at all times during
business hours open to inspection by authorized officers of the law, and shall be
preserved for at least three years from the date of making. A current inventory shall
be kept by every . . . pharmacy . . . holding a currently valid and unrevoked
certificate, license, permit, registration, or exemption under Division 2 (commencing
with Section 1200) of the Health and Safety Code or under Part 4 (commencing with
Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a
stock of dangerous drugs or dangerous devices.

1 12. Section 4101, subdivision (a), states: “A pharmacist may take charge of and act as the
2 pharmacist-in-charge of a pharmacy upon application by the pharmacy and approval by the board.
3 A pharmacist-in-charge who ceases to act as the pharmacist-in-charge of the pharmacy shall
4 notify the board in writing within 30 days of the date of that change in status.”

5 13. Section 4105 states:

6 (a) All records or other documentation of the acquisition and disposition of
7 dangerous drugs and dangerous devices by any entity licensed by the board shall be
8 retained on the licensed premises in a readily retrievable form.

9 (b) The licensee may remove the original records or documentation from the
10 licensed premises on a temporary basis for license-related purposes. However, a
11 duplicate set of those records or other documentation shall be retained on the licensed
12 premises.

13 (c) The records required by this section shall be retained on the licensed
14 premises for a period of three years from the date of making.

15 (d) Any records that are maintained electronically shall be maintained so that
16 the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on
17 duty shall, at all times during which the licensed premises are open for business, be
18 able to produce a hard copy and electronic copy of all records of acquisition or
19 disposition or other drug or dispensing-related records maintained electronically.

20 14. Section 4113 states that:

21 (a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days
22 thereof, shall notify the board in writing of the identity and license number of that
23 pharmacist and the date he or she was designated.

24 (b) The proposed pharmacist-in-charge shall be subject to approval by the
25 board. The board shall not issue or renew a pharmacy license without identification
26 of an approved pharmacist-in-charge for the pharmacy..

27 (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
28 with all state and federal laws and regulations pertaining to the practice of pharmacy.

 (d) Every pharmacy shall notify the board in writing, on a form designed by the
board, within 30 days of the date when a pharmacist-in-charge ceases to act as the
pharmacist-in-charge, and shall on the same form propose another pharmacist to take
over as the pharmacist-in-charge. The proposed replacement pharmacist-in-charge
shall be subject to approval by the board. If disapproved, the pharmacy shall propose
another replacement within 15 days of the date of disapproval and shall continue to
name proposed replacements until a pharmacist-in-charge is approved by the board..

 (e) If a pharmacy is unable, in the exercise of reasonable diligence, to identify
within 30 days a permanent replacement pharmacist-in-charge to propose to the board
on the notification form, the pharmacy may instead provide on that form the name of
any pharmacist who is an employee, officer, or administrator of the pharmacy or the
entity that owns the pharmacy and who is actively involved in the management of the

1 pharmacy on a daily basis, to act as the interim pharmacist-in-charge for a period not
2 to exceed 120 days. The pharmacy, or the entity that owns the pharmacy, shall be
3 prepared during normal business hours to provide a representative of the board with
4 the name of the interim pharmacist-in-charge with documentation of the active
5 involvement of the interim pharmacist-in-charge in the daily management of the
6 pharmacy, and with documentation of the pharmacy's good faith efforts prior to
7 naming the interim pharmacist-in-charge to obtain a permanent pharmacist-in-charge.
8 By no later than 120 days following the identification of the interim pharmacist-in-
9 charge, the pharmacy shall propose to the board the name of a pharmacist to serve as
10 the permanent pharmacist-in-charge. The proposed permanent pharmacist-in-charge
11 shall be subject to approval by the board. If disapproved, the pharmacy shall propose
12 another replacement within 15 days of the date of disapproval, and shall continue to
13 name proposed replacements until a pharmacist-in-charge is approved by the board.

14 15. Section 4301 states, in pertinent part, that:

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

19

20 (d) The clearly excessive furnishing of controlled substances in violation of
21 Section 11153 of the Health and Safety Code.

22

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

26

27 (j) The violation of any of the statutes of this state, of any other state, or of the
28 United States regulating controlled substances and dangerous drugs.

. . . .

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

16. Section 4305 states:

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

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

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

8 17. Section 4306.5 states:

9 Unprofessional conduct for a pharmacist may include any of the following:

10 (a) Acts or omissions that involve, in whole or in part, the inappropriate
11 exercise of his or her education, training, or experience as a pharmacist, whether or
12 not the act or omission arises in the course of the practice of pharmacy or the
13 ownership, management, administration, or operation of a pharmacy or other entity
14 licensed by the board.

15 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or
16 implement his or her best professional judgment or corresponding responsibility with
17 regard to the dispensing or furnishing of controlled substances, dangerous drugs, or
18 dangerous devices, or with regard to the provision of services.

19 (c) Acts or omissions that involve, in whole or in part, the failure to consult
20 appropriate patient, prescription, and other records pertaining to the performance of
21 any pharmacy function.

22 (d) Acts or omissions that involve, in whole or in part, the failure to fully
23 maintain and retain appropriate patient-specific information pertaining to the
24 performance of any pharmacy function.

25 18. Section 4307 provides as follows:

26 (a) Any person who has been denied a license or whose license has been revoked or
27 is under suspension, or who has failed to renew his or her license while it was under
28 suspension, or who has been a manager, administrator, owner, member, officer,
director, associate, partner, or any other person with management or control of any
partnership, corporation, trust, firm, or association whose application for a license has
been denied or revoked, is under suspension or has been placed on probation, and
while acting as the manger, administrator, owner, member, officer, director, associate,
partner, or any other person with management or control had knowledge or
knowingly participated in any conduct for which the license was denied, revoked,
suspended, or placed on probation, shall be prohibited from serving as a manager,
administrator, owner, member, officer, director, associate, or partner, or in any
position with management or control of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed
on probation, this prohibition shall remain in effect for a period not to exceed five
years.

(2) Where the license is denied or revoked, the prohibition shall continue until
the license is issued or reinstated.

1 (b) Manager, administrator, owner, member, officer, director, associate,
2 partner, or any other person with management or control of a license as used in this
3 section and Section 4308, may refer to a pharmacist or to any other person who
4 serves in such capacity in or for a licensee.

5

6 19. Section 4332 states:

7 Any person who fails, neglects, or refuses to maintain the records required by
8 Section 4081 or who, when called upon by an authorized officer or a member of the
9 board, fails, neglects or refuses to produce or provide the records within a reasonable
10 time, or who willfully produces or furnishes records that are false, is guilty of a
11 misdemeanor.

12 CALIFORNIA REGULATIONS

13 20. California Code of Regulations, title 16, section 1709, subdivision (a), states:

14 Each permit to operate a pharmacy shall show the name and address of the
15 pharmacy, the form of ownership (individual, partnership or corporation) and the
16 pharmacist-in-charge. Each pharmacy shall, in its initial application on the annual
17 renewal form, report the name of the pharmacist-in-charge, the names of all owners
18 and the names of the corporate officers (if a corporation). Any changes in the
19 pharmacist-in-charge, or the owners, or corporate officers shall be reported to the
20 Board within 30 days.

21 21. California Code of Regulations, title 16, section 1709.1, states, in pertinent part:

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

24 (b) The pharmacy owner shall vest the pharmacist-in-charge with adequate
25 authority to assure compliance with the laws governing the operation of a pharmacy.

26

27 22. California Code of Regulations, title 16, section 1718, states:

28 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
Professions Code shall be considered to include complete accountability for all
dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304
shall be available for inspection upon request for at least 3 years after the date of the
inventory.

23 23. California Code of Regulations, title 16, section 1735.8, states:

24 (a) Any pharmacy engaged in compounding shall maintain, as part of its written
25 policies and procedures, a written quality assurance plan designed to monitor and
26 ensure the integrity, potency, quality, and labeled strength of compounded drug
27 preparations.

1 (b) The quality assurance plan shall include written procedures for verification,
2 monitoring, and review of the adequacy of the compounding processes and shall also
3 include written documentation of review of those processes by qualified pharmacy
4 personnel.

5 (c) The quality assurance plan shall include written standards for qualitative and
6 quantitative analysis of compounded drug preparations to ensure integrity, potency,
7 quality, and labeled strength, including the frequency of testing. All qualitative and
8 quantitative analysis reports for compounded drug preparations shall be retained by
9 the pharmacy and maintained along with the compounding log and master formula
10 document. The quality assurance plan shall include a schedule for routine testing and
11 analysis of specified compounded drug preparations to ensure integrity, potency,
12 quality, and labeled strength, on at least an annual basis.

13 (d) The quality assurance plan shall include a written procedure for scheduled
14 action in the event any compounded drug preparation is ever discovered to be outside
15 minimum standards for integrity, potency, quality, or labeled strength.

16 (e) The quality assurance plan shall include a written procedure for responding
17 to out-of-range temperature variations within the pharmacy and within patient care
18 areas of a hospital where furnished drug is returned for redispensing.

19 **CODE OF FEDERAL REGULATIONS**

20 24. Code of Federal Regulations, title 21, section 1304.03 states, in pertinent part:

21

22 (b) A registered individual practitioner is required to keep records, as described
23 in 1304.04, of controlled substances in Schedules II, III, IV, and V which are
24 dispensed, other than by prescribing or administering in the lawful course of
25 professional practice.

26 25. Code of Federal Regulations, title 21, section 1304.04 states, in pertinent part:

27 (a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, every
28 inventory and other records required to be kept under this part must be kept by the
registrant and be available, for at least 2 years from the date of such inventory or
records, for inspection and copying by authorized employees of the Administration.

29 26. Code of Federal Regulations, title 21, section 1304.11 states:

30 (a) General requirements. Each inventory shall contain a complete and accurate
31 record of all controlled substances on hand on the date the inventory is taken, and
32 shall be maintained in written, typewritten, or printed form at the registered location.
33 An inventory taken by use of an oral recording device must be promptly transcribed.
34 Controlled substances shall be deemed to be "on hand" if they are in the possession of
35 or under the control of the registrant, including substances returned by a customer,
36 ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the
37 registrant, and substances in the possession of employees of the registrant and
38 intended for distribution as complimentary samples. A separate inventory shall be
made for each registered location and each independent activity registered, except as
provided in paragraph (e)(4) of this section. In the event controlled substances in the

1 possession or under the control of the registrant are stored at a location for which
2 he/she is not registered, the substances shall be included in the inventory of the
3 registered location to which they are subject to control or to which the person
4 possessing the substance is responsible. The inventory may be taken either as of
opening of business or as of the close of business on the inventory date and it shall be
indicated on the inventory.

5 (b) Initial inventory date. Every person required to keep records shall take an
6 inventory of all stocks of controlled substances on hand on the date he/she first
7 engages in the manufacture, distribution, or dispensing of controlled substances, in
accordance with paragraph (e) of this section as applicable. In the event a person
commences business with no controlled substances on hand, he/she shall record this
fact as the initial inventory.

8 (c) Biennial inventory date. After the initial inventory is taken, the registrant
9 shall take a new inventory of all stocks of controlled substances on hand at least every
10 two years. The biennial inventory may be taken on any date which is within two years
of the previous biennial inventory date.

11

12 (e) Inventories of manufacturers, distributors, registrants that reverse distribute,
13 importers, exporters, chemical analysts, dispensers, researchers, and collectors. Each
14 person registered or authorized (by 1301.13, 1307.11, 1307.13, or part 1317 of this
chapter) to manufacture, distribute, reverse distribute, dispense, import, export,
15 conduct research or chemical analysis with controlled substances, or collect
16 controlled substances from ultimate users, and required to keep records pursuant to
1304.03 shall include in the inventory the information listed below.

17

18 (4) *Inventories of importers and exporters.* Each person registered or authorized
19 to import or export controlled substances shall include in the inventory the same
20 information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of
this section. Each such person who is also registered as a manufacturer or as a
distributor shall include in his/her inventory as an importer or exporter only those
stocks of controlled substances that are actually separated from his stocks as a
manufacturer or as a distributor (e.g., in transit or in storage for shipment).

21 27. Code of Federal Regulations, title 21, section 1364.03 states:

22 (a) A prescription for a controlled substance may be issued only by an
23 individual practitioner who is:

24 (1) authorized to prescribe controlled substances by the jurisdiction in which
he is licensed to practice his profession and

25 (2) either registered or exempted from registration pursuant to Secs.
26 1301.22(c) and 1301.23 of this chapter.

27 (b) A prescription issued by an individual practitioner may be communicated to
28 a pharmacist by an employee or agent of the individual practitioner.

1 **COST RECOVERY**

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

6 **DANGEROUS DRUGS**

7 29. Section 4022 states:

8 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
9 self-use in humans or animals, and includes the following:

10 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
11 without prescription," "Rx only," or words of similar import.

12 (b) Any device that bears the statement: "Caution: federal law restricts this
13 device to sale by or on the order of a _____," "Rx only," or words of similar
14 import, the blank to be filled in with the designation of the practitioner licensed to use
15 or order use of the device.

16 (c) Any other drug or device that by federal or state law can be lawfully
17 dispensed only on prescription or furnished pursuant to Section 4006.

18 30. Lidocaine ointment, also known by its brand name of Xylocaine, is a dangerous drug
19 under section 4022. Lidocaine ointment is used as a local anesthetic.

20 31. Diclofenac topical gel, also known by its brand name of Voltaren, is a dangerous drug
21 under section 4022. Diclofenac topical gel is used as an anti-inflammatory.

22 32. Naproxen is a dangerous drug under section 4022, and used for pain relief.

23 33. Chlorzoxazone tablets, also known by its brand name of Paraflex, is a dangerous drug
24 under section 4022. Chlorzoxazone is used as a muscle relaxant.

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2018 BOARD INSPECTION

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2 34. On November 28, 2017, the Board received a complaint from J. Z. of National
3 Pharmaceutical Services (NPS), a Pharmacy Benefit Manager.¹ J. Z. alleged that NPS, on behalf
4 of Medicare Part D Plan CareMore Health, conducted an audit on Respondent Ten Pharmacy that
5 resulted in claims reversal for insufficient evidence of timely copayment collection by the
6 pharmacy. The complaint also stated that: “The [NPS] member received 10 tubes of 35.4 grams
7 of Lidocaine 5% ointment she did not authorize be filled. Upon reversal notification two
8 pharmacy employees showed up to the members home, requesting she sign a document attesting
9 to receiving the medication and threatening to turn her into collections. The pharmacy then called
10 the member and told her she would be responsible for the full plan paid total of \$878.25, not just
11 her copay of \$9.50. And if she didn't pay she would be turned into collections.”

12 35. On January 23, 2018, a Board Inspector (“the Board Inspector”) received records
13 from NPS related to an investigation concerning Respondent Ten Pharmacy, and NPS’s audit
14 from January 27, 2017 to July 5, 2017, which indicated that:

- 15 • Respondent Ten Pharmacy was initially identified by CareMore as submitting claims for
16 Lidocaine 5% ointment.
- 17 • All of the claims in question consisted of Lidocaine ointment 5%, Diclofenac gel 1% and
18 Diclofenac gel 3%.
- 19 • NPS interviewed patients who indicated that the pharmacy waived copayments and mailed
20 refills of the medication to patients without their approval, or at their request. The pharmacy
21 then provided records documenting that copays were collected. However, NPS concluded
22 there was insufficient evidence to prove that the pharmacy had collected copayments in a
23 timely manner. As a result of the originally audited 38 claims, 27 claims were
24 administratively reversed because the members stated they were never asked to pay

25
26 ¹ Pharmacy Benefit Managers (PBM) are third-party administrators of prescription drug
27 programs such as commercial health plans, employer or employees plans and Medicare Part D
28 plans. PBM are primarily responsible for developing and maintaining the formulary, contracting
with pharmacies, negotiating discounts and rebates with drug manufacturers, and processing and
paying prescription drug claims.

1 copayments - nor did they pay any copayments. An additional five claims processed after the
2 audit would be administratively reversed based on the members' statements the pharmacy
3 never requested or collected a copayment.

4 d. The total amount to be reversed was \$9,126.12.

5 36. The following summarizes the documentation reviewed and interviews with
6 patients/members. The amount of the copayment for the medication varied.

7 • F. B. had prescriptions filled for Lidocaine ointment 5% on 05/26/2017, 06/26/2017
8 and 07/28/2017. She indicated she received three shipments, without her approval or
9 request to fill. She did not pay a copayment or receive a bill. The claims for these
10 medications were reversed.

11 • H. N. had prescriptions filled for Diclofenac gel 1% on 05/09/2017 and 06/05/2017
12 and for Lidocaine ointment 5% on the same dates. H. N. stated he paid around \$60 one
13 time, and told the pharmacy to stop sending the medications. He never received a
14 second shipment on 06/05/2017 and never paid a second copayment. One claim for the
15 Diclofenac gel and one claim for the Lidocaine ointment 5% was reversed.

16 • L. O. had prescriptions filled for Diclofenac gel 1% on 05/05/2017, 06/29/2017 and
17 08/23/2017. She received knee injections from Dr. N. and has not paid any
18 copayments. She has not received a bill from the pharmacy. She paid Dr. N. around
19 \$60. The claims for these medications were reversed.

20 • D. N. had prescriptions filled for Lidocaine ointment 5% on 05/02/2017 and
21 06/26/2017 and for Diclofenac gel 3% on the same dates. D. N. stated she didn't
22 request or approve any refills, has never paid a copayment or received a bill. The
23 medication is not helping, she has too much of it, and they can stop sending it. The
24 claims for these medications were reversed.

25 • C. C. had a prescription filled for Diclofenac gel 1% on 05/01/2017, and stated she
26 has never paid a copayment or received a bill. The claim for this medication was
27 reversed.

1 • A. P. had a prescription filled for Diclofenac gel 1% on 05/17/2017, and did not pay
2 the copayment. The medication isn't working too well. The claim for this medication
3 was not reversed.

4 • C. J. had four prescriptions filled for Diclofenac gel 1% on 05/09/2017, 06/05/2017,
5 07/05/2017, and 08/18/2017 and four prescriptions for Lidocaine ointment 5% on the
6 same dates. C. J. stated the medications came automatically without her request or
7 approval, and she never paid a copayment or received a bill. The claims for these
8 medications were reversed.

9 • M. P. had one prescription filled for Diclofenac gel 1% on 02/10/2017, and did pay
10 the copayment. The claim for this medication was not reversed.

11 • C. G. had seven prescriptions filled for Lidocaine ointment 5% on 01/27/2017,
12 03/13/2017, 04/10/2017, 05/09/2017, 06/09/2017, 07/27/2017 and 08/18/2017. She
13 indicated that she did not request or approve the medications, but the pharmacy is just
14 sending them. She never paid any copayment and has never received a bill. She has
15 sufficient quantity and doesn't need them to keep sending it. The claims for these
16 medications were all reversed.

17 • L. C. had four prescriptions filled for Diclofenac gel 1% on 03/28/2017, 04/18/2017,
18 05/16/2017 and 07/03/2017 and four prescriptions filled for Lidocaine ointment 5% on
19 03/21/2017, 04/18/2017, 05/16/2017 and 07/03/2017. The pharmacy called each month
20 for approval to refill the medications. She never asked to pay any copayment and when
21 she asked about the cost, she was told she did not have to pay anything out-of-pocket.
22 The claims for four out of eight of the prescriptions were reversed.

23 • F. A. had one prescription filled for Diclofenac gel 1% on 03/02/2017. She had been
24 receiving the medication from Walgreen's, but Dr. G. sent the prescription to the
25 pharmacy because they deliver. She did not like that, and went to the Intervalley office
26 to ask them not to deliver the medication to her house. She paid the copayment. The
27 claim for this medication was reversed.

28

- M. B. received three prescriptions for Lidocaine ointment 5% on 02/02/2017, 03/16/2017 and 04/24/2017. M. B. could not be reached for an interview.

37. NPS' audit for the period of time between January 27, 2017 and August 31, 2017 indicated that Respondent Ten Pharmacy submitted 37 "unreversed" claims for eight CareMore members between January 1, 2017 and August 31, 2017. Based on the customer statements, with the majority of members attesting to never being asked to pay a copayment and receiving mail order shipments without their approval or at their request, 18 claims for Lidocaine would be reversed.

38. The following summarizes the documentation reviewed and patient/member interviews for Lidocaine 5% ointment claims which were audited:

Z. W. had a prescription filled for Lidocaine ointment 5% on 03/08/2017. Z. W. did not authorize the pharmacy to transfer her prescription from Drug Depot, and did not authorize the pharmacy to ship the medication to her. She refused the second shipment in July and she was never asked to pay a copayment, nor did she. The claim for this medication was reversed.

- D. A. had three prescriptions filled for Lidocaine ointment on 06/12/2017, 07/11/2017 and 08/18/2017. The claims were reversed.

- E. N. had four prescriptions filled for Lidocaine ointment on 04/28/2017, 05/22/2017, 06/26/2017, and 07/27/2017. Patient stated she told Dr. K. N. she did not have pain and left when he tried to give her an injection in her knee. She never requested that the pharmacy to send her the medication, and she never paid a copayment. When she asked the pharmacy to stop sending the medication to her, she was told the medication was on automatic refill. The claims were reversed.

- R. L. had two prescriptions filled for Lidocaine ointment on 07/18/2017 and 08/18/2017. Customer statement is not evidence pharmacy collected copayments. The claims were reversed.

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1 • M. Z. had four prescriptions filled for Lidocaine ointment on 05/12/2017, 06/09/2017,
2 07/11/2017 and 08/18/2017. Patient stated she has never paid a copay or been asked to pay a
3 copayment. The shipment comes automatically without her approval and she has a surplus.
4 The claims were all reversed.

5 • A. R. had two prescriptions filled for Lidocaine ointment 5% on 07/19/2017 and
6 08/18/2017. Patient stated he has no applicable copayments. The claims were not reversed.

7 • C. F. had four prescriptions filled for Lidocaine ointment 5% on 01/31/2017, 03/10/2017,
8 04/10/2017 and 05/09/2017. The claims were reversed.

9 39. On November 3, 2017, NPS sent a notice of termination to Respondent Ten
10 Pharmacy, and the pharmacy appealed NPS's decision. As a result of their findings, NPS sent a
11 complaint regarding Respondent Ten Pharmacy to the National Benefit Integrity MEDIC.

12 40. On February 20, 2018, the Board Inspector received a statement from J. Z. B., setting
13 forth the facts underlying a complaint by a Medicare Part D Member, D. A., who attested to never
14 being charged a copayment or paying a copayment. The pharmacy was audited by NPS
15 following questionable claims activity for high dollar topical medications known to be used in
16 fraud schemes.

17 41. On February 15, 2018, the Board Inspector inspected Respondent Ten Pharmacy.
18 Details of the inspection included, but are not limited to, the following:

- 19 • Respondent Ten Pharmacy is an independent pharmacy, which dispenses approximately
20 80 prescriptions per day and is typically staffed with two pharmacists, three technicians
21 processing and billing prescriptions, one clerk, and one delivery driver.
- 22 • The pharmacy delivered to patients' residences and not to physicians' offices.
- 23 • The pharmacy compounded for certain prescriptions such as hormones, pain creams and
24 capsules.
- 25 • The pharmacy had not conducted any Drug Enforcement Administration (DEA)
26 inventory; however, the pharmacy had a perpetual inventory.

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1 42. The Board Inspector interviewed the pharmacy’s staff, including but not limited to
2 Respondent Luke Vu, who stated that:

- 3 • 30% of the prescriptions were delivered to patients (Golden State Overnight/GSO or
4 delivery staff). The pharmacy used to use GSO and recently they began using a delivery
5 staff.
- 6 • “All patients were contacted prior to their delivery”.
- 7 • 5%-30% of the prescriptions were on auto-refill.
- 8 • The top two most dispensed medications were Lidocaine ointment and Diclofenac gel.
- 9 • All prescriptions delivered required a signature, including for refills.
- 10 • The pharmacy did not have any contracts with the physicians, and the pharmacy received
11 prescriptions by marketing to physicians and providing physicians with preprinted
12 prescription forms.
- 13 • The pharmacy received prescriptions from physicians’ offices directly via facsimile, orally
14 or electronically. On most occasions physicians’ offices provided the patients’
15 information (patients address, phone and insurance) to the pharmacy.
- 16 • Once the prescription was received from the physician, the pharmacy processed the
17 prescription and contacted the patients prior to dispensing.
- 18 • Patient copayments were collected at the time of delivery/dispensing. If the copayment
19 was not collected at the time of dispensing, the patient was added to the pharmacy’s
20 “copay collection” spreadsheet for copayment collection follow up. If the copayment
21 collection was not collected after contacting the patients three times, the copayment was
22 waived. This happened around 3% of the time.
- 23 • Copayments were not waived unless patient met the criteria for “financial hardship”.
- 24 • All pharmacy billing was in house and not outsourced.

25 43. The Board Inspector requested from the pharmacy, and received documents related
26 to its dispensing history, its inventory, the “Copy collection” spreadsheet, copayment waiver
27 application for financial hardship, some of the prescription hard copies, a DEA biennial inventory
28 dated February 16, 2018, its policy about collection and waiver of prescription share cost, among

1 other documents. According to document(s) produced, the pharmacy's policy is to contact each
2 patient prior to dispensing medications, except for in limited circumstances when the patient did
3 not timely respond.

4 44. The Board Inspector also interviewed and/or obtained information directly from
5 more than 10 patients, related to the allegations in the complaint against the pharmacy. Based on
6 evidence provided by NPS and during the Board's investigation, Respondent Ten Pharmacy
7 dispensed prescriptions to patients without their approval and waived patients' copayments in
8 order to encourage the patient to receive unwanted prescriptions. After an investigation began
9 concerning the pharmacy's billing scheme and its failure to collect copayments for the
10 medications, the pharmacy started requesting that patients pay their copayments which had
11 previously been waived. Most of the patients did not sign up for automatic refill of their
12 medications with the pharmacy, and received a large volume of them automatically. A. R.
13 indicated the pharmacy sent her several boxes of medication. P. M. received an immense amount
14 of the medication from the pharmacy and contacted them twice to stop the deliveries. M. P.
15 contacted the pharmacy on several occasions to ask them to stop delivering the medications, but
16 they continued to dispense them. The pharmacy dispensed higher quantities of medication and/or
17 more frequently than needed and knowingly dispensed prescriptions without receiving approval
18 and without disclosing the copayment requirements to patients until after dispensing the
19 prescriptions, as follows:

Patient Initials	Prescription number/ date (sold or ready date)
P. M.	#6100538
	5/19/2017
	8/24/2017
	6/9/2017
	3/10/2017
	2/13/2017
	4/24/2017
P. M.	#6100539
	5/19/2017
	7/28/2017
	6/9/2017

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	3/10/2017
	2/13/2017
	4/24/2017
D. A.	#6101509
	06/12/2017
	07/13/2017
	08/18/2017
E. L.	#6100481
	7/11/2017
	2/6/2017
	6/6/2017
	3/13/2017
	8/17/2017
	4/6/2017
	5/5/2017
E. L.	#6102806
	9/8/2017
A. R.	#6101243
	5/8/2017
	7/11/2017
	6/9/2017
A. R.	#6101248
	7/11/2017
	5/8/2017
	6/9/2017

45. The Board Inspector received records of purchases, credits and dispositions from Respondent Ten Pharmacy’s wholesalers for the Lidocaine ointment 5% and Diclofenac 1% and 3%, between 10/30/2015 and 02/15/2018, in addition to other documents, and performed an audit for this time period. The audit showed significant negative and positive variances. A positive variance indicates a shortage (purchases/acquisitions greater than sales/disposition). A negative variance indicates an overage (sold more than purchased). The results of the audit are summarized in the following table:

Table -: Board's Audit for the period of 10/30/2015 (opening date) -02/15/2018 (inspection date)

Medication	Units	Beginning Inventory- 10/30/2015	Acq WLS: Capital	Acq WLS: Cardinal health	Acq WLS: Harvard (subsidiary of Cardinal)	Acq WLS: Redmond and Greer	Acq PHY: Valley	Acq WLS: HD	Acq WLS: Masters	ACQ TOTAL	<Disposition>	<Destruction>	<Ending Inventory> 02/15/2018	DISPO TOTAL	Variance
Lidocaine 5% ointment (each tube is 35.44 grams)	grams	1,134	218,680	15,060	42,528	105,792	1,770	-	141,760	526,724	470,537	-	19,953	490,489	36,235
Diclofenac 3% gel (each tube is 100 grams)	grams	3,100	28,000	-	4,000	44,000	-	-	4,000	83,100	84,200	-	9,800	94,000	-10,900
Diclofenac 1% gel (each tube is 100 grams)	grams	1,500	-	14,385	-	191,800	5,000	1,000	-	213,685	157,800	-	15,900	173,700	39,985

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Respondent Ten Pharmacy and Respondent Jacqueline Vu**
3 **Failure to Conduct Controlled Substances Inventory)**

4 46. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to
5 disciplinary action under Code sections 4081, subdivision (a), 4113, subdivision (c), 4300, 4301
6 subdivisions (j) and (o), and 4302, 4332, in conjunction with California Code of Regulations, title
7 16, section 1718, and Code of Federal Regulations, title 21, sections 1304.03, subdivision (b),
8 1304.4, subdivision (a), 1304.11, subdivisions (a)-(c) and (e)(4), and 1364.03, subdivisions (a)
9 and (b), in that Respondent Ten Pharmacy and Respondent Jacqueline Vu, while acting as the PIC
10 for Respondent Ten Pharmacy, failed to: (1) prepare and maintain a complete and accurate record
11 of all of its controlled substances on an inventory date; and (2) conduct a DEA biennial inventory
12 of controlled substances within two years of the previous biennial inventory date. The allegations
13 in paragraphs 34-45 are incorporated here by reference.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Respondent Ten Pharmacy and Respondent Jacqueline Vu**
16 **Acts Involving Dishonesty, Fraud, or Deceit)**

17 47. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary
18 action for unprofessional conduct under sections 4113, subdivision (c), 4300, 4301, subdivision
19 (f), and 4302, in that Respondent Jacqueline Vu, while acting as the PIC of Respondent Ten
20 Pharmacy, committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption, by
21 billing patients' insurance for prescriptions which the patients did not request or approve the
22 prescriptions and/or for which the patients did not provide their required copayment, until after
23 the prescriptions were dispensed, and then attempting to get patient approval and copayments
24 after the start an investigation related to their billing practices. The allegations in paragraphs 34-
25 45 are incorporated here by reference.

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THIRD CAUSE FOR DISCIPLINE
**(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Excessive Furnishing of Controlled Substances)**

48. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action for unprofessional conduct under sections 4113, subdivision (c), 4300, 4301, subdivision (d), 4302 and 4036.5, subdivisions (a)-(d), for dispensing clearly excessive quantities of medication and/or more frequently than needed to patients, including to D. A., A. R., E. L. and P. M. The allegations in paragraphs 34-45 are incorporated here by reference.

FOURTH CAUSE FOR DISCIPLINE
**(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Records of Acquisition and Disposition)**

49. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under sections 4005, 4113, subdivision (c), 4300, 4301, subdivisions (o) and/or (j), and 4302, in conjunction with section 4036.5, for violating Sections 4081, subdivision (a), 4105, subdivisions (a)-(d), and 4332, in that, while Respondent Jacqueline Vu was acting as PIC of Respondent Ten Pharmacy, she and the pharmacy failed to maintain and/or produce required records to the Board for Respondent Ten Pharmacy, in that an audit for the period of time between 10/30/2015 and 02/15/2018, revealed an overage of Diclofenac 3% gel and shortages of Lidocaine 5% ointment and Diclofenac 1% gel. The allegations in paragraphs 34-45 are incorporated here by reference.

**FIRST 2020 BOARD INSPECTION AND
BOARD INVESTIGATION REPORT DATED SEPTEMBER 30, 2020**

50. On February 20, 2020, the Board received a complaint from Y. M., a former employee (pharmacy technician) of the pharmacy. Y. M. has alleged that she has personal knowledge that the pharmacy compounded, labeled, billed and dispensed lidocaine-naproxen creams without the naproxen ingredient. Y. M. has further alleged that the pharmacy billed patients' insurance for compounded naproxen-lidocaine cream (NL cream) and naproxen suspension, but only dispensed the NL cream, and received refunds for the unused naproxen. Y. M. also alleged that Respondent Luke Vu: (1) fired any staff who questioned the practice; and

1 (2) trained staff to bill patients' insurance for unauthorized and excessive medications. Y. M.,
2 who began her employment at the pharmacy on or about February 10, 2020, voluntarily resigned
3 from the pharmacy on or about February 21, 2020, because of these fraudulent activities.

4 51. Y. M. informed the Board Investigator that while she was employed at the pharmacy,
5 Respondent Luke Vu primarily managed the pharmacy and his wife, Respondent Jacqueline Vu,
6 was never present at the pharmacy. Accordingly, Respondent Luke Vu was inappropriately
7 effectively acting as the PIC in place of Respondent Jacqueline Vu at Ten Pharmacy.

8 52. On July 21, 2020, Respondent Luke Vu informed the Board Inspector that the
9 pharmacy had closed due to looting, and that the medication compounding records were
10 destroyed from water and fire damage. Respondent Luke Vu also related that the pharmacy had
11 not sent any of their compounded preparation to be tested for qualitative and quantitative analysis.

12 53. On August 5, 2020, Respondent Jacqueline Vu informed the Board Inspector that she
13 could not provide the following records because they were destroyed: (1) the pharmacy's latest
14 self-assessment; (2) compounding records for NL cream and naproxen suspension; and (3) the
15 pharmacy's compounding policy and procedure. Respondent Jacqueline Vu did provide the
16 names of the ingredient wholesalers and dispensing report for all prescriptions between July 21,
17 2019 and May 29, 2020. Respondent Jacqueline Vu also related that the pharmacy was filling
18 approximately 50 prescriptions per day prior to its destruction. Respondent Jacqueline Vu
19 explained that the pharmacy engaged in very limited compounding activities and no end product
20 tests were conducted on compounded preparations.

21 54. Based on the Drug Utilization Report² for Respondent Ten Pharmacy provided by
22 McKesson (DUR1) from July 21, 2019, through May 29, 2020, the Board Inspector determined
23 that the pharmacy compounded and dispensed 2,467 prescriptions without conducting qualitative
24 and quantitative analysis of the compounded drug preparations.

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28 ² Computer generated report of the pharmacy's dispensing records. The reports contains
the date the prescription was dispensed, prescription number, drug name, drug strength, quantity
dispensed and other information. 21

1 55. On September 9, 2020, the Board Inspector gave written notice to Ten Pharmacy,
2 Respondent Jacqueline Vu and Respondent Luke Vu of the compounding violations. On
3 September 14, 2020, Respondent Jacqueline Vu notified McKesson that the DUR1 was
4 inaccurate and contained duplicates of the same prescriptions. On September 15, 2020,
5 McKesson provided another Drug Utilization Report (DUR2) to the Board Inspector.

6 56. Based on the DUR2, the Board Inspector determined that the pharmacy compounded
7 and dispensed 521 prescriptions without conducting qualitative and quantitative analysis of the
8 compounded drug preparations.

9 57. On September 22, 2020, Respondent Jacqueline Vu provided the pharmacy's
10 dispensing records (DUR3). The DUR3 indicated that the pharmacy compounded 520
11 prescriptions from July 21, 2019, through May 29, 2020. Respondent Jacqueline Vu also
12 responded that: (1) the compounding processes employed by the pharmacy may have been
13 somewhat deficient with respect to routine testing of compounded drug preparations; (2) she will
14 not resume compounding after the pharmacy resumes operation; (3) Respondent Luke Vu
15 dispensed compounded prescriptions without conducting routine testing; and (4) she accepted full
16 responsibility for the compounding violations.

17 58. Based on the variances in the Drug Utilization Reports provided by McKesson and
18 the pharmacy, the Board Inspector requested an accurate dispensing history from May 1, 2018,
19 through May 29, 2020. Based on the dispensing history provided by Respondent Jacqueline Vu
20 (DUR4), the Board Inspector determined that the pharmacy compounded and dispensed 936
21 prescriptions without conducting qualitative and quantitative analysis of the compounded drug
22 preparations. On September 29, 2020, the Board Inspector gave written notice to Ten Pharmacy,
23 Respondent Jacqueline Vu and Respondent Luke Vu of the compounding violations. Thereafter,
24 the Board Inspector prepared and submitted an Investigation Report dated September 30, 2020
25 regarding her findings in connection therewith.

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FIFTH CAUSE FOR DISCIPLINE
**(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Failure to Assure Compounding Quality)**

59. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under Code sections 4113, subdivision (c), 4300, 4301 subdivision (o), and 4302, in conjunction with California Code of Regulations, title 16, section 1735.8, subdivisions (a)-(e), in that, during the course of an investigation by the Board, it was determined that Respondent Ten Pharmacy and Respondent Jacqueline Vu, while acting as the PIC for Ten Pharmacy, allowed Respondent Luke Vu to act as PIC, and dispensed 936 compounded prescriptions and failed to conduct routine testing on their compound preparations to ensure integrity, potency, quality and labeled strength. The allegations in paragraphs 50-58 are incorporated here by reference.

SIXTH CAUSE FOR DISCIPLINE
**(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Unprofessional Conduct – Respondent Luke Vu Acting as
Ten Pharmacy’s PIC Without Registration)**

60. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under Code sections 4301, subdivisions (f), (j) and (o), and 4305, in conjunction with California Code of Regulations, title 16, sections 1709 and 1709.1, in that during the course of two investigations by the Board, it was determined that Respondent Luke Vu acted as the PIC for Ten Pharmacy, by managing, training and operating the pharmacy without being registered as the PIC with the Board. While inappropriately effecting acting as Ten Pharmacy’s PIC, Respondent Luke Vu dispensed and/or oversaw the dispensing of compounded prescriptions without conducting routine testing to ensure integrity, potency, quality and labeled strength. The allegations in paragraphs 50-58 are incorporated here by reference.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Respondent Luke Vu**
3 **Unprofessional Conduct – Acting as Ten Pharmacy’s PIC Without Registration)**

4 61. Respondent Luke Vu is subject to disciplinary action under Code sections 4301,
5 subdivisions (f), (j) and (o), in conjunction with California Code of Regulations, title 16, sections
6 1709 and 1709.1, in that during the course of two investigations by the Board, it was determined
7 that Respondent Luke Vu acted as the PIC for Ten Pharmacy, by managing, training and operating
8 the pharmacy without being registered as the PIC with the Board. While inappropriately
9 effectively acting as Ten Pharmacy’s PIC, Respondent Luke Vu dispensed and/or oversaw the
10 dispensing of compounded prescriptions without conducting routine testing to ensure integrity,
11 potency, quality and labeled strength. The allegations in paragraphs 50-58 are incorporated here
12 by reference.

13 **SECOND 2020 BOARD INSPECTION AND**
14 **BOARD INVESTIGATION REPORT DATED DECEMBER 15, 2020**

15 62. On June 22, 2020, the Board received a complaint from C. K., a former employee
16 (durable medical equipment sales representative) of the pharmacy. C. K. alleged that Respondent
17 Luke Vu terminated her employment after she reported that several of her prescriptions were
18 billed to her insurance by the pharmacy without her approval. C. K. also alleged that Respondent
19 Luke Vu used her past prescriptions and committed billing fraud. C. K. further alleged that she
20 continued to receive unwanted prescriptions from the pharmacy after her termination.

21 63. The Board Investigator received records related to C. K.’s lawsuit against Respondent
22 Luke Vu, the pharmacy, Respondent Drug Depot and Netco Medical, Inc. The records indicated
23 or alleged that: (1) Respondent Luke Vu employed C. K. from 2017 to April 13, 2020; (2) in or
24 about 2019, C. K. discovered that Respondent Luke Vu altered her past prescriptions to make
25 false insurance claims; (3) Respondent Luke Vu had been committing durable medical equipment
26 and insurance fraud since September 2019; and (4) Respondent Luke Vu terminated C. K. after
27 she complained about the illegal activities.

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64. On August 4, 2020, the Board Investigator discussed the allegations with C. K., who explained that: (1) in or about April 2020, Respondent Ten Pharmacy provided health insurance to C. K. and other employees; (2) the pharmacy started billing and dispensing unwanted prescriptions, including lidocaine, and durable medical equipment; (3) PIC Jacqueline Vu was never present at the pharmacy; (4) Respondent Luke Vu managed and operated the pharmacy; (5) C. K. was terminated from her employment after she confronted Respondent Luke Vu about the unlawful activities; and (6) Respondent Luke Vu reversed the majority of insurance claims and attempted to pay C. K. to not complain to the Board or insurance about the activities.

65. C. K. forwarded the following emails from Respondent Luke Vu to the Board Investigator: (1) email dated March 1, 2020, which stated: “Orals pain have better coverage than topical pain! Stop pushing topical pains! Let MD know if they write pain creams not likely to get covered...if oral drug is covered we can convert to topical,” and (2) email dated March 6, 2020, which provided a prescription template for high profit margin prescriptions for medications such as lidocaine 2% gel, doxepin 5% cream, diclofenac sodium 3% gel, DermacinRx ZRM (Lidocaine 5%+Dimethicone 5%), DermacinRx Lexitral PharmaPak (Diclofenac 1.5%+Capsaicin 0.025%) and others. On August 14, 2020, C. K. emailed photographs of three of her prescriptions processed and dispensed by Respondent Drug Depot for lidocaine 5% ointment, dated March 12, 2018, Chlorzoxazone 250 mg, dated March 6, 2019, and Calcipotriene cream 0.005%.

66. Based on the Drug Utilization Report for Respondent Ten Pharmacy from July 21, 2019, through July 21, 2020 (discussed in Board investigation CI 2019 87399), the Board Inspector determined that the following prescriptions were dispensed to C. K. under the prescribing authority of Dr. Jeffrey Pearson (Table 1):

Ready Date	Written	Rx #	Product Name	Strength	Dispensed Quantity	C. K.'s Response
10/17/2019	8/5/2019	6121164	Lidocaine ointment	5%	50	Not prescribed
10/23/2019	8/5/2019	6121165	Chlorzoxazone Tabs	250 mg	180	Not prescribed

1	1/13/2020	8/5/2019	6121164	Lidocaine ointment	5%	50	Not prescribed
2	2/17/2020	8/5/2019	6121164	Lidocaine ointment	5%	50	Not prescribed
3							
4	3/26/2020	3/24/2020	6122766	Clotrimazole-Betamethasone cream	1-0.05%	90	Received without authorization
5							
6	3/26/2020	3/25/2020	6122765	Econazole Nitrate cream	1%	170	Received without authorization
7							
8							
9	3/26/2020	3/25/2020	6122767	Ketoprofen caps	25 mg	270	Not prescribed
10							
11	3/26/2020	3/25/2020	6122768	Lidocaine patch	5%	90	Received without authorization
12							

13 The Board Inspector requested and received a statement from Dr. Pearson stating he did not
14 recall if he had authorized the prescriptions in Table 1 to C. K.

15 67. The Board Inspector also requested and received Respondent Drug Depot's
16 dispensing history. Based on Respondent Drug Depot's dispensing history, the Board Inspector
17 determined that the following prescriptions (under the prescribing authority of Dr. Pearson) were
18 processed and billed to C. K.'s insurance without her approval (Table 2):

19	Written	Dispensed	Rx #	Product Name and Strength	Dispensed Quantity	Insurance	Insurance Reimburse
20	12/13/2017	3/12/2018	6052104	Lidocaine ointment 5%	212.64	Blue Shield of California	\$981.06
21							
22	12/11/2018	3/6/2019	6061551	Chlorzoxazone 250 mg tablets	120	BCBS of California	\$2,234.90
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EIGHTH CAUSE FOR DISCIPLINE

**(Respondent Ten Pharmacy and Respondent Jacqueline Vu
Unprofessional Conduct – Dispensing Unauthorized Prescriptions)**

68. Respondent Ten Pharmacy and Respondent Jacqueline Vu are subject to disciplinary action under Code sections 4301, subdivision (f), and 4306.5, subdivision (a), in that, during the course of an investigation by the Board, it was determined that Respondent Ten Pharmacy and Respondent Jacqueline Vu, while acting as the PIC for Respondent Ten Pharmacy, dispensed prescriptions not approved or requested by C. K. The allegations in paragraphs 62-67 are incorporated here by reference.

NINTH CAUSE FOR DISCIPLINE

**(Respondent Drug Depot and Respondent Luke Vu
Unprofessional Conduct – Dispensing Unauthorized Prescriptions)**

69. Respondent Drug Depot and Respondent Luke Vu are subject to disciplinary action under Code sections 4301, subdivision (f), and 4306.5, subdivision (a), in that, during the course of an investigation by the Board, it was determined that Respondent Drug Depot and Respondent Luke Vu, while acting as the PIC for Respondent Drug Depot, dispensed prescriptions not approved or requested by C. K. The allegations in paragraphs 62-67 are incorporated here by reference.

TENTH CAUSE FOR DISCIPLINE

**(Respondent Luke Vu
Unprofessional Conduct – Acting as Ten Pharmacy’s PIC Without Registration)**

70. Respondent Luke Vu is subject to disciplinary action under Code sections 4301, subdivision (f), and 4306.5, subdivision (a), in conjunction with Code section 4113, subdivision (c), in that during the course of two investigations by the Board, it was determined that Respondent Luke Vu acted as the PIC for Ten Pharmacy, by managing, training and operating the pharmacy without being registered as the PIC with the Board. While inappropriately effectively acting as Ten Pharmacy’s PIC, Respondent Luke Vu allowed prescriptions to be dispensed without C. K.’s approval. The allegations in paragraphs 62-67 are incorporated here by reference.

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OTHER MATTERS

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2 71. Pursuant to Section 4307, if discipline is imposed on Pharmacy Permit Number PHY
3 53619 issued to Respondent Ten Pharmacy while Respondent Jacqueline Vu has been an officer,
4 director, or owner and had knowledge of or knowingly participated in any conduct for which the
5 licensee was disciplined, Respondent Ten Pharmacy and Respondent Jacqueline Vu shall be
6 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
7 partner, or in any other position with management or control of a licensee for five years if
8 Pharmacy Permit Number PHY 53619 is placed on probation or until Pharmacy Permit Number
9 PHY 53619 is reinstated if it is revoked.

10 72. Pursuant to Section 4307, if discipline is imposed on Pharmacy Permit Number PHY
11 50418 issued to Respondent Drug Depot while Respondent Luke Vu has been an officer, director,
12 or owner and had knowledge of or knowingly participated in any conduct for which the licensee
13 was disciplined, Respondent Drug Depot and Respondent Luke Vu shall be prohibited from
14 serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any
15 other position with management or control of a licensee for five years if Pharmacy Permit
16 Number PHY 50418 is placed on probation or until Pharmacy Permit Number PHY 50418 is
17 reinstated if it is revoked.

PRAYER

18
19 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
20 Second Amended Accusation, and that following the hearing, the Board of Pharmacy issue a
21 decision:

- 22 1. Revoking or suspending Permit Number PHY 53619, issued to Ten Pharmacy Inc.
23 dba Ten Pharmacy, Jacqueline Duval Vu;
- 24 2. Revoking or suspending Pharmacist Number RPH 56257, issued to Jacqueline Duval
25 Vu;
- 26 3. Revoking or suspending Pharmacist Number RPH 54277, issued to Luke Duval Vu;
- 27 4. Revoking or suspending Permit Number PHY 50418, issued to Drug Depot Pharmacy
28 Inc.;

1 5. Prohibiting Ten Pharmacy Inc. dba Ten Pharmacy, Jacqueline Duval Vu, from
2 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
3 licensee for five years if Permit Number PHY 53619 is placed on probation, or until Permit
4 Number PHY 53619 is reinstated if Permit Number PHY 53619 is revoked;

5 6. Prohibiting Drug Depot Pharmacy Inc. from serving as a manager, administrator,
6 owner, member, officer, director, associate, or partner of a licensee for five years if Permit
7 Number PHY 50418 is placed on probation, or until Permit Number PHY 50418 is reinstated if
8 Permit Number PHY 50418 is revoked;

9 7. Prohibiting Jacqueline Duval Vu from serving as a manager, administrator, owner,
10 member, officer, director, associate, or partner of a licensee for five years if Permit Number PHY
11 53619 is placed on probation, or until Permit Number PHY 53619 is reinstated if Permit Number
12 PHY 53619 is revoked;

13 8. Prohibiting Luke Duval Vu from serving as a manager, administrator, owner,
14 member, officer, director, associate, or partner of a licensee for five years if Permit Number PHY
15 50418 is placed on probation, or until Permit Number PHY 50418 is reinstated if Permit Number
16 PHY 50418 is revoked;

17 9. Ordering Ten Pharmacy Inc. dba Ten Pharmacy, Drug Depot Pharmacy Inc.,
18 Jacqueline Duval Vu and Luke Duval Vu to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, jointly and severally, pursuant to Business and
20 Professions Code section 125.3; and,

21 10. Taking such other and further action as deemed necessary and proper.

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24 DATED: 5/7/2021

Signature on File

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