

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

In the Matter of the Statement of Issues Against:

MAI TUYET NANCY KHUU, Respondent

Intern Pharmacist License Applicant

Agency Case No. 6640

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 March 4, 2020.

It is so ORDERED on February 3, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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

13 In the Matter of the Statement of Issues
14 Against:
15 **MAI TUYET NANCY KHUU**
16 **Intern Pharmacist License**
17 Respondent.

Case No. 6640

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of
23 Pharmacy (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Diane de Kervor,
25 Deputy Attorney General.

26 2. Respondent Mai Tuyet Nancy Khuu (Respondent) is represented in this proceeding
27 by attorney Tony J. Park, Esq., whose address is: 49 Discovery, Ste. 240, Irvine, CA 92618.

28 3. On or about March 13, 2018, the Board received an Intern Pharmacist License

1 application from Mai Tuyet Nancy Khuu (Respondent). On or about June 21, 2018, the Board
2 received a Pharmacist Examination for Licensure application from Respondent. Respondent
3 certified under penalty of perjury to the truthfulness of all statements, answers, and
4 representations in both applications. The Board denied both applications on December 5, 2018.

5 **JURISDICTION**

6 4. Statement of Issues No. 6640 was filed before the Board, and is currently pending
7 against Respondent. The Statement of Issues and all other statutorily required documents were
8 properly served on Respondent on March 8, 2019.

9 5. A copy of Statement of Issues No. 6640 is attached as exhibit A and incorporated
10 herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 6. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Statement of Issues No. 6640. Respondent has also carefully read,
14 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
15 Disciplinary Order.

16 7. Respondent is fully aware of her legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-
18 examine the witnesses against her; the right to present evidence and to testify on her own behalf;
19 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of
20 documents; the right to reconsideration and court review of an adverse decision; and all other
21 rights accorded by the California Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 9. Respondent admits the truth of each and every charge and allegation in Statement of
26 Issues No. 6640.

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1 manufacturing, obtaining, handling, distributing, billing, or charging for any drug,
2 device or controlled substance.

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

4 **2. Report to the Board**

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

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

14 **3. Interview with the Board**

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

20 **4. Cooperate with Board Staff**

21 Respondent shall timely cooperate with the board's inspection program and with the board's
22 monitoring and investigation of respondent's compliance with the terms and conditions of her
23 probation, including but not limited to: timely responses to requests for information by board
24 staff; timely compliance with directives from board staff regarding requirements of any term or
25 condition of probation; and timely completion of documentation pertaining to a term or condition
26 of probation. Failure to timely cooperate shall be considered a violation of probation.

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1 **5. Continuing Education**

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

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

5 During the period of probation, respondent shall notify all present and prospective
6 employers of the decision in case number 6640 and the terms, conditions and restrictions imposed
7 on respondent by the decision, as follows:

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

19 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
20 respondent undertaking any new employment, respondent shall cause (a) her direct supervisor, (b)
21 her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
22 compliance supervisor, and (c) the owner or owner representative of her employer, to report to the
23 board in writing acknowledging that the listed individual(s) has/have read the decision in case
24 number 6640, and terms and conditions imposed thereby. If one person serves in more than one
25 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
26 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
27 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
28 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in

1 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
2 in case number 6640, and the terms and conditions imposed thereby.

3 If respondent works for or is employed by or through an employment service, respondent
4 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
5 of the decision in case number 6640, and the terms and conditions imposed thereby in advance of
6 respondent commencing work at such licensed entity. A record of this notification must be
7 provided to the board upon request.

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

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

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

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

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

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

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

27 During the period of probation, respondent shall not supervise any intern pharmacist, be the
28 pharmacist-in-charge, designated representative-in-charge, responsible manager or other

1 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
2 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

3 **9. Probation Monitoring Costs**

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

8 **10. Status of License**

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

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

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

18 Following the effective date of this decision, should respondent cease practice due to
19 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
20 respondent may relinquish her license, including any indicia of licensure issued by the board,
21 along with a request to surrender the license. The board or its designee shall have the discretion
22 whether to accept the surrender or take any other action it deems appropriate and reasonable.
23 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to
24 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
25 become a part of the respondent's license history with the board.

26 Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall
27 license, including any indicia of licensure not previously provided to the board within ten (10)
28 days of notification by the board that the surrender is accepted if not already provided.

1 Respondent may not reapply for any license from the board for three (3) years from the effective
2 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
3 of the date the application for that license is submitted to the board, including any outstanding
4 costs.

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

6 Except during periods of suspension, respondent shall, at all times while on probation, be
7 employed as a Intern Pharmacist in California for a minimum of 60 hours per calendar month.
8 Any month during which this minimum is not met shall extend the period of probation by one
9 month. During any such period of insufficient employment, respondent must nonetheless comply
10 with all terms and conditions of probation, unless respondent receives a waiver in writing from
11 the board or its designee.

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

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

25 **13. Violation of Probation**

26 If respondent has not complied with any term or condition of probation, the board shall
27 have continuing jurisdiction over respondent, and the board shall provide notice to respondent
28 that probation shall automatically be extended, until all terms and conditions have been satisfied

1 or the board has taken other action as deemed appropriate to treat the failure to comply as a
2 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
3 board or its designee may post a notice of the extended probation period on its website.

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

11 **14. Completion of Probation**

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

14 **15. Psychotherapy**

15 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
16 board or its designee, for prior approval, the name and qualifications of a licensed mental health
17 practitioner of respondent's choice. Within thirty (30) days of approval thereof, respondent shall
18 submit documentation to the board demonstrating the commencement of psychotherapy with the
19 approved licensed mental health practitioner. Should respondent, for any reason, cease treatment
20 with the approved licensed mental health practitioner, respondent shall notify the board
21 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
22 psychotherapist or licensed mental health practitioner of respondent's choice to the board for its
23 prior approval. Within thirty (30) days of approval thereof, respondent shall submit
24 documentation to the board demonstrating the commencement of psychotherapy with the
25 approved replacement. Failure to comply with any requirement or deadline stated by this
26 paragraph shall be considered a violation of probation.

27 Upon approval of the initial or any subsequent licensed mental health practitioner,
28 respondent shall undergo and continue treatment with that therapist, at respondent's own expense,

1 until the therapist recommends in writing to the board, and the board or its designee agrees by
2 way of a written notification to respondent, that no further psychotherapy is necessary. Upon
3 receipt of such recommendation from the treating therapist, and before determining whether to
4 accept or reject said recommendation, the board or its designee may require respondent to
5 undergo, at respondent's own expense, a mental health evaluation by a board-appointed or board-
6 approved psychiatrist or psychologist. If the approved evaluator recommends that respondent
7 continue psychotherapy, the board or its designee may require respondent to continue
8 psychotherapy.

9 Psychotherapy shall be at least once a month unless otherwise approved by the board. If at
10 any time the treating therapist recommends an increase in the frequency of psychotherapy visits,
11 then an increase will be required. Respondent shall provide the therapist with a copy of the
12 board's accusation and decision no later than the first therapy session. Respondent shall take all
13 necessary steps to ensure that the treating therapist submits written quarterly reports to the board
14 concerning respondent's fitness to practice, progress in treatment, and such other information
15 required by the board or its designee.

16 If at any time the treating therapist determines that respondent cannot practice safely or
17 independently, the therapist shall notify the board immediately by telephone and follow up by
18 written letter within three (3) working days. Upon notification from the board or its designee of
19 this determination, respondent shall be automatically suspended and shall not resume practice
20 until notified by the board that practice may be resumed.

21 During any suspension, respondent shall not enter any pharmacy area or any portion of the
22 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
23 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
24 any area where dangerous drugs and/or dangerous devices or controlled substances are
25 maintained.

26 Respondent shall not practice pharmacy nor do any act involving drug selection, selection
27 of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent
28 manage, administer, or be a consultant to any licensee of the board, or have access to or control

1 the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous
2 devices or controlled substances. Respondent shall not resume practice until notified by the
3 board.

4 During any suspension, respondent shall not engage in any activity that requires the
5 professional judgment of and/or licensure as a Intern Pharmacist. Respondent shall not direct or
6 control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling,
7 or retailing of dangerous drugs and/or dangerous devices or controlled substances.

8 Failure to comply with any requirement or deadline stated by this term shall be considered a
9 violation of probation.

10 **16. No Ownership or Management of Licensed Premises**

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

18 **ACCEPTANCE**

19 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
20 discussed it with my attorney, Tony J. Park, Esq.. I understand the stipulation and the effect it
21 will have on my Intern Pharmacist License. I enter into this Stipulated Settlement and
22 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
23 Decision and Order of the Board of Pharmacy.

24
25 DATED: 10/21/2019

26 
27 MAI TUYET NANCY KHUU
28 Respondent

1 I have read and fully discussed with Respondent Mai Tuyet Nancy Khuu the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 10/22/2019

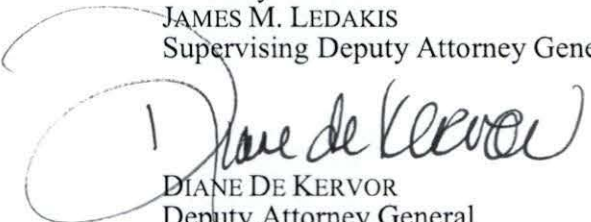

TONY J. PARK, ESQ.
Attorney for Respondent

8 **ENDORSEMENT**

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

11 DATED: 10/23/19

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


DIANE DE KERVOR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 6640

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Supervising Deputy Attorney General
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8 *Attorneys for Complainant*

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

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13 In the Matter of the Statement of Issues
14 Against:

15 **MAI TUYET NANCY KHUU**

16 **Intern Pharmacist License Applicant**

17 Respondent.

Case No. 6640

STATEMENT OF ISSUES

18
19 Complainant alleges:

20 **PARTIES**

21 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of
23 Consumer Affairs.

24 2. On or about March 13, 2018, the Board received an Intern Pharmacist License
25 application from Mai Tuyet Nancy Khuu (Respondent). On or about June 21, 2018, the Board
26 received a Pharmacist Examination for Licensure application from Respondent. Respondent
27 certified under penalty of perjury to the truthfulness of all statements, answers, and
28 representations in both applications. The Board denied both applications on December 5, 2018.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 4. Section 4300, subdivision (c), of the Code provides, in pertinent part, that “The board
6 may refuse a license to any applicant guilty of unprofessional conduct.”

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

9 (a) Notwithstanding any other provisions of this code, the provisions of this
10 division shall govern the denial of licenses on the grounds of:

11 (1) Knowingly making a false statement of material fact, or knowingly
12 omitting to state a material fact, in an application for a license.

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit with the
15 intent to substantially benefit himself or another, or substantially injure another.

16 (4) Commission of any act which, if done by a licentiate of the business or
17 profession in question, would be grounds for suspension or revocation of license.

18 (b) Notwithstanding any other provisions of this code, the provisions of this
19 division shall govern the suspension and revocation of licenses on grounds specified in
20 paragraphs (1) and (2) of subdivision (a).

21 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack
22 of good moral character or any similar ground relating to an applicant’s character,
23 reputation, personality, or habits.

24 6. Section 480 of the Code states:

25 (a) A board may deny a license regulated by this code on the grounds that the
26 applicant has one of the following:

27 (1) Been convicted of a crime. A conviction within the meaning of this
28 section means a plea or verdict of guilty or a conviction following a plea of nolo
contendere. Any action that a board is permitted to take following the establishment of
a conviction may be taken when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal, or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

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28

1 (3)(A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if
4 the crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, a person shall not be
7 denied a license solely on the basis that he or she has been convicted of a felony if he
8 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) Notwithstanding any other provisions of this code, a person shall not be
14 denied a license solely on the basis of a conviction that has been dismissed pursuant to
15 Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
16 conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of
17 the Penal Code shall provide proof of the dismissal.

18 (d) A board may deny a license regulated by this code on the ground that the
19 applicant knowingly made a false statement of fact that is required to be revealed in the
20 application for the license.

21 7. Section 482 of the Code states:

22 Each board under the provisions of this code shall develop criteria to evaluate
23 the rehabilitation of a person when:

24 (a) Considering the denial of a license by the board under Section 480; or

25 (b) Considering suspension or revocation of a license under Section 490.

26 Each board shall take into account all competent evidence of rehabilitation
27 furnished by the applicant or licensee.

28 8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive evidence
of the fact that the conviction occurred, but only of that fact, and the board may inquire
into the circumstances surrounding the commission of the crime in order to fix the
degree of discipline or to determine if the conviction is substantially related to the
qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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1 9. Section 4301 of the Code states:

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

5 ...

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

9 ...

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

18 REGULATORY PROVISIONS

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

20 When considering the denial of a facility or personal license under Section 480
21 of the Business and Professions Code, the board, in evaluating the rehabilitation of the
22 applicant and his present eligibility for licensing or registration, will consider the
23 following criteria:

24 (1) The nature and severity of the act(s) or offense(s) under consideration as
25 grounds for denial.

26 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
27 consideration as grounds for denial under Section 480 of the Business and Professions
28 Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred
to in subdivision (1) or (2).

///

1 (4) Whether the applicant has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the applicant.

2 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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

4 For the purpose of denial, suspension, or revocation of a personal or facility
5 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
6 Professions Code, a crime or act shall be considered substantially related to the
7 qualifications, functions or duties of a licensee or registrant if to a substantial degree it
evidences present or potential unfitness of a licensee or registrant to perform the
functions authorized by his license or registration in a manner consistent with the public
health, safety, or welfare.

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(Unprofessional Conduct – Commission of Act Involving Dishonesty
10 and Deceit on July 14, 2016)**

11 12. Respondent's application is subject to denial under section 480, subdivisions (a)(2)
12 and (a)(3)(A), of the Code, for unprofessional conduct, in that on July 14, 2016, she was detained
13 for theft (shoplifting), an act involving dishonesty and deceit, which would be grounds for
14 discipline under section 4301, subdivision (f), of the Code, for a licensed intern pharmacist. The
15 circumstances are as follows:

16 a. On July 14, 2016, at approximately 4:47 p.m., an officer with the Avon Police
17 Department was dispatched to a Walmart retail store in Avon, Indiana, in reference to a reported
18 shoplifting incident. Upon arrival, Walmart's loss prevention agent informed the officer that
19 Respondent selected approximately \$60.09 worth of cosmetics, and passed all possible points of
20 sale without paying for the items. While speaking with the officer, Respondent admitted that she
21 attempted to steal the merchandise. Respondent was released and subsequently issued a summons
22 for theft.

23 b. On or about July 27, 2016, in a criminal proceeding titled *State of Indiana v.*
24 *Mai Khuu*, case number 32D02-1607-CM-001111, Respondent was charged with misdemeanor
25 theft, in violation of Indiana Code section 35-43-4-2, subdivision (a). Respondent entered into a
26 six-month Pre-Trial Diversion Agreement wherein she admitted to the theft and was ordered to,
27 among other things, serve ten hours of community service, complete a theft class, and stay away

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1 from all Walmart stores in Hendricks County, Indiana. The case was subsequently dismissed on
2 or about June 20, 2017.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(February 14, 2017 Criminal Conviction for Theft on October 26, 2016)**

5 13. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
6 and (a)(3)(A), of the Code, in that she was convicted of crime that is substantially-related to the
7 qualifications, functions, and duties of an intern pharmacist, which would be grounds for
8 discipline under section 4301, subdivision (l), of the Code, for a licensed intern pharmacist. The
9 circumstances are as follows:

10 a. On or about February 14, 2017, in a criminal proceeding titled *State of Indiana*
11 *v. Mai T. Khuu*, in Tippecanoe County Superior Court, cause number 79D05-1611-CM-004280,
12 Respondent was convicted on her plea of guilty of theft (IC § 35-43-4-2(a)), a misdemeanor.

13 b. The facts that led to the conviction are that on October 26, 2016, at
14 approximately 1:38 p.m., officers with the West Lafayette Police Department (WLPD) were
15 dispatched to a Walmart retail store in West Lafayette, Indiana, in reference to a reported
16 shoplifting incident. Upon arrival, Walmart's loss prevention agent informed WLPD officers that
17 Respondent was observed taking several items including makeup, condoms, and mouthwash from
18 the store without paying. After being confronted by the loss prevention agent, Respondent
19 retreated to the women's restroom and discarded some of the merchandise prior to being
20 apprehended. During questioning, Respondent admitted to a WLPD officer that she entered
21 Walmart with the intention of stealing merchandise. Respondent claimed that she was diagnosed
22 with ovarian cancer, and that she was stealing merchandise in order to re-sell and cover her
23 medical expenses. The story was later determined to be false. Respondent was issued a summons
24 for theft and released.

25 c. As a result of the conviction, Respondent was granted unsupervised probation
26 for 364 days, and ordered to pay court costs/restitution, and to comply with all other standard
27 terms of criminal probation.

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THIRD CAUSE FOR DENIAL OF APPLICATION
**(Unprofessional Conduct – Commission of Act Involving Dishonesty
and Deceit on October 26, 2016)**

14. Respondent’s application is subject to denial under section 480, subdivisions (a)(2) and (a)(3)(A), of the Code, for unprofessional conduct, in that on October 26, 2016, as described in paragraph 13, above, which is incorporated herein by reference, she was detained for theft (shoplifting), an act involving dishonesty and deceit, which would be grounds for discipline under section 4301, subdivision (f), of the Code, for a licensed intern pharmacist.

PRAYER

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

1. Denying the application of Mai Tuyet Nancy Khuu for an Intern Pharmacist License;
2. Denying the application of Mai Tuyet Nancy Khuu for the Pharmacist Examination for Licensure; and
2. Taking such other and further action as deemed necessary and proper.

DATED: March 4, 2019 

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