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7

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

12 In the Matter of the Accusation Against:

Case No. 3156

13 GAROS PHARMACY
1646 E. Washington Blvd.
Pasadena, CA 91104
MADLEN BASILYAN, Pharmacist-In-Charge
14 Pharmacy Permit No. PHY 47485,
15 and
16 MADLEN BASILYAN
400 W. California Ave. #209
Glendale, CA 91203
17 Pharmacist License No. RPH 56808
18 Respondents.
19

ACCUSATION

20
21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold (Complainant) brings this Accusation solely in her official
24 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
25 2. On or about June 14, 2006, the Board of Pharmacy issued Pharmacy
26 Permit Number PHY 47485 to Garos Pharmacy; with Madlen Basilyan as Pharmacist-In-Charge
27 (Respondent Garos Pharmacy). The Pharmacy Permit was in full force and effect at all times
28 relevant to the charges brought herein and will expire on June 1, 2009, unless renewed.

1 3. On or about March 11, 2005, the Board of Pharmacy issued Pharmacist
2 License Number RPH 56808 to Madlen Basilyan (Respondent Basilyan). The Pharmacist
3 License was in full force and effect at all times relevant to the charges brought herein and will
4 expire on August 31, 2010, unless renewed.

5 **JURISDICTION**

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

9 5. Section 118, subdivision (b), of the Code provides, in pertinent part, that
10 the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of
11 jurisdiction to proceed with a disciplinary action during the period within which the license may
12 be renewed, restored, reissued or reinstated.

13 6. Section 4011 of the Code states that the Board shall administer and
14 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled
15 Substances Act [Health & Safety Code, § 11000 et seq.].

16 7. Section 4300, subdivision (a) of the Code provides that every license
17 issued may be suspended or revoked.

18 8. Section 4402, subdivision (a) of the Code provides that any license that is
19 not renewed within three years following its expiration may not be renewed, restored, or
20 reinstated and shall be canceled by operation of law at the end of the three-year period.

21 **STATUTORY PROVISIONS**

22 9. Section 4040 of the Code states, in pertinent part:

23 “(a) ‘Prescription’ means an oral, written, or electronic transmission order that is
24 both of the following:

25 (1) Given individually for the person or persons for whom ordered that includes
26 all of the following:

27 (A) The name or names and address of the patient or patients.

28 (B) The name and quantity of the drug or device prescribed and the

1 directions for use.

2 (C) The date of issue.

3 (D) Either rubber stamped, typed, or printed by hand or typeset, the name,
4 address, and telephone number of the prescriber, his or her license classification, and his or her
5 federal registry number, if a controlled substance is prescribed.”

6
7 10. Section 4063 of the Code states:

8 “No prescription for any dangerous drug or dangerous device may be refilled
9 except upon authorization of the prescriber. The authorization may be given orally or at the time
10 of giving the original prescription. No prescription for any dangerous drug that is a controlled
11 substance may be designated refillable as needed.”

12 11. Section 4076, subdivision (a) of the Code states, in pertinent part,

13 "A pharmacist shall not dispense any prescription except in a container that meets the
14 requirements of state and federal law and is correctly labeled . . .”

15 12. Section 4081, subdivision (a) of the Code states:

16 "(a) All records of manufacture and of sale, acquisition, or disposition of
17 dangerous drugs or dangerous devices shall be at all times during business hours open to
18 inspection by authorized officers of the law, and shall be preserved for at least three years from
19 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
20 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
21 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
22 certificate, license, permit, registration, or exemption under Division 2 (commencing with
23 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)
24 of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or
25 dangerous devices.

26 13. Section 4105 of the Code states, in pertinent part:

27 “(a) All records or other documentation of the acquisition and disposition of
28 dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on

1 the licensed premises in a readily retrievable form.

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

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

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8 14. Section 4113 of the Code states, in pertinent part:

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

12 “(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
13 with all state and federal laws and regulations pertaining to the practice of pharmacy.”

14

15 15. Section 4301 of the Code states:

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

20

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

23 "(e) The clearly excessive furnishing of controlled substances in violation of
24 subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in
25 determining whether the furnishing of controlled substances is clearly excessive shall include,
26 but not be limited to, the amount of controlled substances furnished, the previous ordering
27 pattern of the customer (including size and frequency of orders), the type and size of the
28 customer, and where and to whom the customer distributes its product.

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"(j) The violation of any of the statutes of this state, or any other state, or of the 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."

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16. Section 4302 of the Code states:

"The board may deny, suspend, or revoke any license of a corporation where conditions exist in relation to any person holding 10 percent or more of the corporate stock of the corporation, or where conditions exist in relation to any officer or director of the corporation that would constitute grounds for disciplinary action against a licensee."

17. Section 4306.5 of the Code states:

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

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

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

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

"(d) Acts or omissions that involve, in whole or in part, the failure to fully

1 maintain and retain appropriate patient-specific information pertaining to the performance of any
2 pharmacy function.”

3 18. Section 4332 of the Code states:

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

8 19. Health and Safety Code section 11153, subdivision (a) states:

9 “(a) A prescription for a controlled substance shall only be issued for a legitimate
10 medical purpose by an individual practitioner acting in the usual course of his or her professional
11 practice. The responsibility for the proper prescribing and dispensing of controlled substances is
12 upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist
13 who fills the prescription. Except as authorized by this division, the following are not legal
14 prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course
15 of professional treatment or in legitimate and authorized research; or (2) an order for an addict or
16 habitual user of controlled substances, which is issued not in the course of professional treatment
17 or as part of an authorized narcotic treatment program, for the purpose of providing the user with
18 controlled substances, sufficient to keep him or her comfortable by maintaining customary use.”

19 20. Health and Safety Code section 11164, in pertinent part states:

20 “Except as provided in Section 11167, no person shall prescribe a controlled
21 substance, nor shall any person fill, compound, or dispense a prescription for a controlled
22 substance, unless it complies with the requirements of this section.

23 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV,
24 or V, except as authorized by subdivision (b), shall be made on a controlled substance
25 prescription form as specified in Section 11162.1 and shall meet the following requirements:

26 “(1) The prescription shall be signed and dated by the prescriber in ink and shall
27 contain the prescriber's address and telephone number; the name of the ultimate user or research
28 subject, or contact information as determined by the Secretary of the United States Department of

1 Health and Human Services; refill information, such as the number of refills ordered and whether
2 the prescription is a first-time request or a refill; and the name, quantity, strength, and directions
3 for use of the controlled substance prescribed.

4 “(2) The prescription shall also contain the address of the person for whom the
5 controlled substance is prescribed. If the prescriber does not specify this address on the
6 prescription, the pharmacist filling the prescription or an employee acting under the direction of
7 the pharmacist shall write or type the address on the prescription or maintain this information in a
8 readily retrievable form in the pharmacy.

9 “(b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any
10 controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or
11 electronically transmitted prescription, which shall be produced in hard copy form and signed
12 and dated by the pharmacist filling the prescription or by any other person expressly authorized
13 by provisions of the Business and Professions Code. Any person who transmits, maintains, or
14 receives any electronically transmitted prescription shall ensure the security, integrity, authority,
15 and confidentiality of the prescription.”

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17 21. Health and Safety Code section 11179 states:

18 “A person who fills a prescription shall keep it on file for at least three years from
19 the date of filling it.”

20 22. Health and Safety Code section 11206 states:

21 “Filed prescriptions shall constitute a transaction record that, together with
22 information that is readily retrievable in the pharmacy pursuant to Section 11164 shall show or
23 include the following:

24 “(a) The name(s) and address of the patient(s).

25 “(b) The date.

26 “(c) The character, including the name and strength, quantity, and directions for
27 use of the controlled substance involved.

28 “(d) The name, address, telephone number, category of professional licensure, and

1 the federal controlled substance registration number of the prescriber.”

2 23. California Code of Regulations, title 16, section 1707.1, states:

3 “Filed prescriptions shall constitute a transaction record that, together with
4 information that is readily retrievable in the pharmacy pursuant to Section 11164 shall show or
5 include the following:

6 “(a) The name(s) and address of the patient(s).

7 “(b) The date.

8 “(c) The character, including the name and strength, quantity, and directions for
9 use of the controlled substance involved.

10 “(d) The name, address, telephone number, category of professional licensure, and
11 the federal controlled substance registration number of the prescriber.”

12 24. California Code of Regulations, title 16, section 1716, states in part:

13 “Pharmacists shall not deviate from the requirements of a prescription except
14 upon the prior consent of the prescriber or to select the drug product in accordance with Section
15 4073 of the Business and Professions Code.”

16 25. California Code of Regulations, title 16, section 1761, states in part:

17 “(a) No pharmacist shall compound or dispense any prescription which contains
18 any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of
19 any such prescription, the pharmacist shall contact the prescriber to obtain the information
20 needed to validate the prescription.

21 “(b) Even after conferring with the prescriber, a pharmacist shall not compound or
22 dispense a controlled substance prescription where the pharmacist knows or has objective reason
23 to know that said prescription was not issued for a legitimate medical purpose.”

24 26. Title 21, Code of Federal Regulations, section 1305.09 (hereinafter
25 “21 C.F.R. § 1305.09”), states in pertinent part:

26 “(a) The purchaser shall submit Copy 1 and Copy 2 of the order form to the
27 supplier, and retain Copy 3 in his own files.

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1 “(e) The purchaser shall record on Copy 3 of the order form the number of
2 commercial or bulk containers furnished on each item and the dates on which such containers are
3 received by the purchaser.”

4 ...

5 **COST RECOVERY**

6 27. Section 125.3 of the Code provides, in pertinent part, that the Board may
7 request the administrative law judge to direct a licentiate found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 **CONTROLLED SUBSTANCES**

11 28. Section 4021 of the Code states:

12 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing
13 with Section 11053) of Division 10 of the Health and Safety Code.”

14 29. Section 4022 of the Code states, in pertinent part:

15 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for
16 self-use, except veterinary drugs that are labeled as such, and include the following:

17 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
18 without prescription,’ ‘Rx only,’ or words of similar import.

19
20 “(c) Any other drug or device that by federal or state law can be lawfully
21 dispensed only on prescription or furnished pursuant to Section 4006.”

22 30. Phenergan with Codeine - a brand name for Promethazine with Codeine.
23 It is a Schedule V controlled substance, as defined in Health and Safety Code section 11058,
24 subdivision (c), and is categorized as a “dangerous drug” pursuant to Business and Professions
25 Code section 4022.

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CHARGES AND ALLEGATIONS

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2 31. On February 21, 2007, the Board of Pharmacy received a referral from the
3 Food and Drug Administration (FDA). The referral concerned an investigation of a package
4 containing fifteen (15) bottles of Promethazine with Codeine that was mailed from Pasadena,
5 California to North Little Rock, Arkansas. One of the bottles was labeled as having originated
6 from Garos Pharmacy in Pasadena, California.

7 32. On or about July 12, 2007, Board inspectors conducted a routine
8 inspection of Respondent Garos Pharmacy and collected records. Respondent Basilyan was
9 interviewed during the inspection. Respondent Basilyan, owner and pharmacist-in-charge, stated
10 that the pharmacy purchased medications through HD Smith and returns were done through RX
11 Returns. Respondent Basilyan purchased the pharmacy from the previous owner sometime in
12 March 2006. Respondent Basilyan also stated that the pharmacy employed one delivery driver
13 for local deliveries, and did no out of state shipments.

14 33. Board inspectors requested Respondent Basilyan count the amount of
15 Promethazine with Codeine in the pharmacy. Respondent Basilyan was asked to produce the
16 starting DEA controlled substance inventory taken during the ownership change on February 27,
17 2006. Respondent Basilyan was asked to produce all records of acquisition and disposition for
18 Promethazine with Codeine. Respondent Basilyan was asked to produce all original
19 prescriptions for Promethazine with Codeine filled from February 27, 2006 to July 12, 2007.
20 Respondent Basilyan was asked to produce a printout for patient MS who sent the box to
21 Arkansas, but no profile was found¹. Respondent Basilyan was also asked to produce a Drug
22 Utilization Report (DUR) for Phenergan with Codeine filled from February 27, 2006 to July 12,
23 2007. A Board inspector conducted a drug audit of Respondent Pharmacy's acquisition and
24 disposition of Phenergan with Codeine. The audit result indicated multiple violations of
25 pharmacy law.

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28 1. For purposes of patient confidentiality, all patients are referred to by their initials. Upon
a proper request for discovery, full names will be provided to Respondents.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Incomplete DEA-222 forms)

3 34. Respondent Garos Pharmacy and Respondent Basilyan are subject to
4 discipline pursuant to Code sections 4113, subdivision (b) and 4301, subdivision (o), on the
5 grounds of unprofessional conduct, in that Respondent Garos Pharmacy and Respondent
6 Basilyan violated 21 C.F.R. § 1305.09. The circumstances are as follows:

7 35. As part of the routine inspection of Respondent Pharmacy, the Board
8 inspector reviewed fifteen (15) DEA-222 order forms. None of the DEA-222 order forms were
9 being completed upon receipt of the drug.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Failure to Produce all Prescription Documents)

12 36. Respondent Garos Pharmacy and Respondent Basilyan are subject to
13 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
14 of unprofessional conduct, in that Respondent Garos Pharmacy and Respondent Basilyan
15 violated Code sections 4081 and 4332, and Health and Safety Code section 11179. The
16 circumstances are as follows:

17 37. A Board inspector requested that Respondents supply all original
18 prescriptions for Promethazine with Codeine from February 27, 2006 to July 12, 2007. The
19 Board inspector requested that Respondents supply a Drug Utilization Report for Phenergan with
20 Codeine filled from February 27, 2006 to July 12, 2007. After comparing the prescriptions that
21 were filled from the DUR and the original prescriptions received from Respondents, the Board
22 inspector determined that Respondents failed to provide the following prescriptions supplied to
23 the Board's inspector: Rx 129177, Rx 126325, Rx 126917, Rx 126919, Rx 129876, Rx 132366,
24 Rx 134056, Rx 136968, and Rx 136981.

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THIRD CAUSE FOR DISCIPLINE

(Unauthorized refills)

38. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of unprofessional conduct, in that Respondents issued 189 refills of 72 prescriptions for controlled substances and/or dangerous drugs, without authorization, in violation of Code sections 4063 and 4306.5. Specifically, Respondents refilled unauthorized prescriptions which did not contain authorized refills on the original prescription as follows:

Patient	Prescription Number	Description of Violation
AA	Rx 132428	3 unauthorized prescription refills for Phenergan with Codeine.
VB	Rx 129979	4 unauthorized prescription refills for Phenergan with Codeine.
CC	Rx 129986	1 unauthorized prescription refill for Phenergan with Codeine.
MC	Rx 135137	2 unauthorized prescription refills for Phenergan with Codeine.
EC	Rx 132877	3 unauthorized prescription refills for Phenergan with Codeine.
JD	Rx 129691	1 unauthorized prescription refill for Phenergan with Codeine.
SD	Rx 129684	4 unauthorized prescription refills for Phenergan with Codeine.
LG	Rx 128492	1 unauthorized prescription refill for Phenergan with Codeine.
LG	Rx 132733	1 unauthorized prescription refill for Phenergan with Codeine.
WG	Rx 134281	4 unauthorized prescription refills for Phenergan with Codeine.
CH	Rx 127219	1 unauthorized prescription refill for Phenergan with Codeine.
CH	Rx 129591	1 unauthorized prescription refill for Phenergan with Codeine.
VH	Rx 129788	2 unauthorized prescription refills for Phenergan with Codeine.
DJ	Rx 133511	3 unauthorized prescription refills for Phenergan with Codeine.
JK	Rx 129098	1 unauthorized prescription refill for Phenergan with Codeine.
MK	Rx 135707	1 unauthorized prescription refill for Phenergan with Codeine.
GK	Rx 130244	2 unauthorized prescription refills for Phenergan with Codeine.
GK	Rx 132955	1 unauthorized prescription refill for Phenergan with Codeine.
FL	Rx 127515	4 unauthorized prescription refills for Phenergan with Codeine.
FL	Rx 129254	1 unauthorized prescription refill for Phenergan with Codeine.
FL	Rx 129694	2 unauthorized prescription refills for Phenergan with Codeine.

1	FL	Rx 130424	1 unauthorized prescription refill for Phenergan with Codeine.
2	GL	Rx 128353	2 unauthorized prescription refills for Phenergan with Codeine.
3	JL	Rx 128653	5 unauthorized prescription refills for Phenergan with Codeine.
4	JL	Rx 130438	2 unauthorized prescription refills for Phenergan with Codeine.
5	JL	Rx 132329	1 unauthorized prescription refill for Phenergan with Codeine.
6	PM	Rx 126778	1 unauthorized prescription refill for Phenergan with Codeine.
7	LM	Rx 132399	1 unauthorized prescription refill for Phenergan with Codeine.
8	EM	Rx 132743	4 unauthorized prescription refills for Phenergan with Codeine.
9	WM	Rx 129538	1 unauthorized prescription refill for Phenergan with Codeine.
10	AM	Rx 127252	1 unauthorized prescription refill for Phenergan with Codeine.
11	MP	Rx 129999	2 unauthorized prescription refills for Phenergan with Codeine.
12	DP	Rx 128304	2 unauthorized prescription refills for Phenergan with Codeine.
13	DP	Rx 132850	3 unauthorized prescription refills for Phenergan with Codeine.
14	SS	Rx 131553	4 unauthorized prescription refills for Phenergan with Codeine.
15	LS	Rx 127821	5 unauthorized prescription refills for Phenergan with Codeine.
16	LS	Rx 129178	5 unauthorized prescription refills for Phenergan with Codeine.
17	LS	Rx 130652	5 unauthorized prescription refills for Phenergan with Codeine.
18	LS	Rx 133120	3 unauthorized prescription refills for Phenergan with Codeine.
19	WS	Rx 127844	4 unauthorized prescription refills for Phenergan with Codeine.
20	WS	Rx 129077	4 unauthorized prescription refills for Phenergan with Codeine.
21	WS	Rx 130136	5 unauthorized prescription refills for Phenergan with Codeine.
22	WS	Rx 133053	2 unauthorized prescription refills for Phenergan with Codeine.
23	GS	Rx 128391	1 unauthorized prescription refill for Phenergan with Codeine.
24	AS	Rx 128165	5 unauthorized prescription refills for Phenergan with Codeine.
25	AS	Rx 132522	2 unauthorized prescription refills for Phenergan with Codeine.
26	CS	Rx 134385	1 unauthorized prescription refill for Phenergan with Codeine.
27	DS	Rx 128110	5 unauthorized prescription refills for Phenergan with Codeine.
28	RS	Rx 128158	5 unauthorized prescription refills for Phenergan with Codeine.
	VS	Rx 126931	1 unauthorized prescription refill for Phenergan with Codeine.
	WS	Rx 127692	2 unauthorized prescription refills for Phenergan with Codeine.
	WS	Rx 129350	5 unauthorized prescription refills for Phenergan with Codeine.
	WS	Rx 130272	3 unauthorized prescription refills for Phenergan with Codeine.

1	WS	Rx 131255	4 unauthorized prescription refills for Phenergan with Codeine.
2	WS	Rx 134877	2 unauthorized prescription refills for Phenergan with Codeine.
3	BS	Rx 132616	1 unauthorized prescription refill for Phenergan with Codeine.
4	MS	Rx 127411	1 unauthorized prescription refill for Phenergan with Codeine.
5	MS	Rx 132215	1 unauthorized prescription refill for Phenergan with Codeine.
6	LS	Rx 129126	5 unauthorized prescription refills for Phenergan with Codeine.
7	LS	Rx 132490	5 unauthorized prescription refills for Phenergan with Codeine.
8	RS	Rx 133243	4 unauthorized prescription refills for Phenergan with Codeine.
9	RS	Rx 135801	1 unauthorized prescription refill for Phenergan with Codeine.
10	TS	Rx 127780	3 unauthorized prescription refills for Phenergan with Codeine.
11	TS	Rx 128576	5 unauthorized prescription refills for Phenergan with Codeine.
12	TS	Rx 130014	5 unauthorized prescription refills for Phenergan with Codeine.
13	TS	Rx 132709	1 unauthorized prescription refill for Phenergan with Codeine.
14	TS	Rx 135702	2 unauthorized prescription refills for Phenergan with Codeine.
15	BT	Rx 126656	5 unauthorized prescription refills for Phenergan with Codeine.
16	BT	Rx 128716	2 unauthorized prescription refills for Phenergan with Codeine.
17	HT	Rx 128684	2 unauthorized prescription refills for Phenergan with Codeine.
18	FW	Rx 127518	2 unauthorized prescription refills for Phenergan with Codeine.
19	FW	Rx 128200	2 unauthorized prescription refills for Phenergan with Codeine.

FOURTH CAUSE FOR DISCIPLINE

(Dispensing of Controlled Substances Prescriptions Not Made on Required Forms)

39. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300 and 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct, for violating Health and Safety Code section 11164, subdivision (a), in that Respondents dispensed prescriptions for controlled substances in Schedule V, that were not made on the required controlled substance prescription forms as specified in Health and Safety Code section 11162.1. Specifically, Respondents dispensed prescription Nos. Rx 132071, 132072, 128435, 128437, 135019, 135020, 129373, 129375, 133557, 133558, 132713, 132715, 134169, 134170, 134273, 134274, 133010, 133011, 130830, 130831, 136884, 136885, and 133454 (all for Phenergan with Codeine) from prescriber Josh Weng, which were not on the

1 required security form.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 (Wrong Prescriber Name)

4 40. Respondent Garos Pharmacy and Respondent Basilyan are subject to
5 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
6 of unprofessional conduct, in that Respondents filled one prescriptions (Rx 129591) incorrectly
7 with the wrong prescriber name (Hantman filled under Nasir), in violation of Code section 4076,
8 and California Code of Regulations, title 16, sections 1707.1 and 1716.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 (Incorrect Directions for Use)

11 41. Respondent Garos Pharmacy and Respondent Basilyan are subject to
12 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
13 of unprofessional conduct, in that Respondents filled prescriptions with incorrect directions twice
14 (Rx 136613 - 1 tsp, not 3 tsp; and Rx 128437 - q6h prn, not tid), in violation of Code section
15 4076, and California Code of Regulations, title 16, sections 1707.1 and 1716.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 (No Directions for Use, Filling with False Directions)

18 42. Respondent Garos Pharmacy and Respondent Basilyan are subject to
19 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
20 of unprofessional conduct, in that Respondents filled three (3) written prescriptions without
21 directions for use (Rx 136987, 134551, and 136424) a total of five (5) times. Code section 4040
22 and Health and Safety Code section 11206 both state a prescription must have directions for use.
23 Respondents violated California Code of Regulations, title 16, sections 1716 by varying from the
24 prescription and having the Respondent Basilyan create her own directions for use; Code section
25 4076 for an incorrect label; California Code of Regulations, title 16, section 1707.1 for having
26 incorrect information on the patient profile; and Health and Safety Code section 11158 for filling
27 the prescription even though it did not have the necessary directions form the prescriber.

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EIGHTH CAUSE FOR DISCIPLINE

(Wrong Medication, Unknown Patient Harm)

43. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of unprofessional conduct, in that Respondents filled two (2) prescriptions with the wrong medication (Rx 129783 - Tylenol #3 filled with #4; and Rx 132807 - Robitussin with Codeine filled with Penergan with Codeine), in violation of California Code of Regulations, title 16, section 1716.

NINTH CAUSE FOR DISCIPLINE

(Professional Judgment, Dispensing Same Drug Twice on Same Day)

44. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of unprofessional conduct, in that Respondents dispensed the same medication twice on the same day for two patients, in violation of Code section 4306.5, and California Code of Regulations, title 16, sections 1707.1 and 1716. The circumstances are as follows:

- a. **Patient CS:** Respondents filled two (2) prescriptions for Phenergan with Codeine on January 15, 2007 for patient CS without justification (Rx 132344 and 132345).
- b. **Patient VS:** Respondents filled Rx 129570 for Phenergan with Codeine twice on October 5, 2006 for patient VS without justification.

TENTH CAUSE FOR DISCIPLINE

(Early Fills)

45. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, in conjunction with Health and Safety Code section 11153, in that Respondents filled a Phenergan with Codeine prescription for patient RF more than 16 days early on 5 occasions, in violation of Code section 4306.5, and California Code of Regulations, title 16, section 1716. The circumstances are as follows:

- a. **Patient RF:** On 11/7/06, Respondents filled Rx 129380 for Phenergan

1 with Codeine 19 days early.

2 b. **Patient RF:** On November 21, 2006, Respondents filled Rx 130472 for
3 Phenergan with Codeine, 16 days early.

4 c. **Patient RF:** On November 21, 2006, Respondents filled Rx 129380 for
5 Phenergan with Codeine, 31 days early.

6 d. **Patient RF:** On November 21, 2006, Respondents filled Rx 129380 for
7 Phenergan with Codeine twice, each 31 days early.

8 e. **Patient RF:** On January 6, 2007, Respondents filled Rx 132182 for
9 Phenergan with Codeine, 31 days early.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

11 (Corresponding Responsibility/Numerous fills)

12 46. Respondent Garos Pharmacy and Respondent Basilyan are subject to
13 discipline pursuant to Code sections 4300, 4301, subdivision (j) and/or subdivision (o), 4302,
14 and 4113, in conjunction with Health and Safety Code section 11153 and California Code of
15 Regulations, title 16, sections 1761, in that from July 7, 2006 to June 8, 2007 (11 months, 2
16 days), Respondents filled and dispensed twenty (20) prescriptions/pints for Phenergan with
17 Codeine for patient LG. A pint bottle of Phenergan with Codeine should last approximately
18 fifteen (15) days, given the directions for use. Patient LG required the Phenergan with Codeine
19 consistently for almost one (1) year. Respondents failed to determine, through inquiry, if patient
20 LG had a legitimate medical purpose for continuing to fill these prescriptions over this period of
21 time.

22 **TWELFTH CAUSE FOR DISCIPLINE**

23 (Corresponding Responsibility/Erroneous and Uncertain Prescriptions)

24 47. Respondent Garos Pharmacy and Respondent Basilyan are subject to
25 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, in conjunction
26 with Health and Safety Code section 11153, in that Respondents failed to take co-responsibility
27 in ensuring the legitimacy of prescriptions, and dispensed prescriptions which contained
28 irregularity, uncertainty, ambiguity, or alteration, without first contacting the prescriber to obtain

1 the information needed to validate the prescription, in violation of California Code of
 2 Regulations, title 16, sections 1716 and 1761. Specifically, Respondents filled prescriptions for
 3 Phenergan with Codeine for patient DJ from 7 to 21 days early and patient DJ received 3 pints in
 4 the same week (2/22/07, 2/26/07, and 2/28/07). Respondents did not question the prescriptions
 5 and the fact that patient DJ received multiple prescriptions from four (4) different physicians
 6 (Weng, Khosa, Pullens, and Gill). The circumstances are as follows:

Rx date	Rx filled	Rx #	Patient	Amount	Directions	Days supply	Days early	MD	Refills	Script	unauthorized
1/26/07	1/26/07	132715	DJ	473	2 tsb q6h pm	11.8		Weng	none	script	
2/22/07	2/22/07	133367	DJ	473	2 tsb q6h pm	11.8		Khosa	none	script	
2/26/07	2/26/07	133454	DJ	473	1 tsb q6h pm	23.65	7.8	Weng	none	script	
2/28/07	2/28/07	133511	DJ	473	2 tsb q6h pm	11.8	21.65	Pullens	2	oral	
2/28/07	3/21/07	133511	DJ	473	2 tsb q6h pm	11.8		Pullens		oral	
3/26/07	3/26/07	134169	DJ	473	1 tsb q6h pm	23.65	6.8	Weng	none	script	
4/5/07	4/5/07	134493	DJ	473	2 tsb q6h pm	15.76	13.65	Khosa	1	script	
2/28/07	4/11/07	133511	DJ	473	2 tsb q6h pm	11.8	9.76	Pullens		oral	
2/28/07	4/25/07	133511	DJ	473	2 tsb q6h pm	11.8		Pullens		oral	unauthorized
4/26/07	4/26/07	135019	DJ	473	1 tsb q6h pm	23.65	10.8	Weng	none	script	
5/7/07	5/7/07	135334	DJ	473	2 tsb q6h pm	11.8	13.65	Gill	1	script	
5/7/07	5/18/07	135334	DJ	473	2 tsb q6h pm	11.8		Gill	1	script	
2/28/07	5/25/07	133511	DJ	473	2 tsb q6h pm	11.8		Pullens		oral	unauthorized
6/11/07	6/11/07	136181	DJ	473	2 tsb q6h pm	23.65		Gill	1	script	
2/28/07	6/14/07	133511	DJ	473	2 tsb q6h pm	11.8	20.65	Pullens		oral	unauthorized
6/11/07	6/18/07	136181	DJ	473	2 tsb q6h pm	23.65	7.8	Gill		script	

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide all Acquisition Documents)

25 48. Respondent Garos Pharmacy and Respondent Basilyan are subject to
 26 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
 27 of unprofessional conduct, in that Respondents violated Code sections 4081, 4105, subdivision
 28 (c), and 4332. The circumstances are as follows:

1 a. The Board requested that Respondents produce all records of acquisition
2 and disposition for Promethazine with Codeine. The Board inspector's audit comparing
3 purchasing invoices records and wholesalers' disposition records revealed Respondents failed to
4 provide the Board inspector with four (4) invoices (683390, 687823, 703475, and 709297).

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

6 (Unauthorized Refills/Early Refill)

7 49. Respondent Garos Pharmacy and Respondent Basilyan are subject to
8 discipline pursuant to Code sections 4300, 4301, subdivision (j) and/or subdivision (o), 4302,
9 and 4113, in conjunction with Code section 4063, Health and Safety Code section 11153, and
10 California Code of Regulations, title 16, sections 1716. The circumstances are as follows:

11 a. On November 26, 2007, the Board received a signed statement from Dr.
12 Nasir regarding his treatment of patient GK. Patient GK has been under the care of Dr. Nasir
13 since February 2004 and is a 50 year old with a history of chronic bronchitis with wheezing and
14 shortness of breath, who complained of pain and allergies. For this, Dr. Nasir prescribed
15 antibiotics with antitussive agents. Of the 20 prescriptions reviewed, Dr Nasir stated that eight
16 (8) were not authorized. Two prescriptions were filled on the same day. Respondents have some
17 paper prescriptions purporting to be from Dr. Nasir that he did not authorize. Prescription
18 #130244 was an oral prescription not authorized by Dr. Nasir and had no refills, yet it was filled
19 on October 5, 2006 and refilled on November 8, 2006 and November 27, 2006. Prescription
20 #132955 was written and filled on February 6, 2007 with no refills and yet Respondents refilled
21 the prescription on February 15, 2007. Respondents also filled the Phenergran with Codeine
22 prescriptions early (10+ days) on eight (8) occasions. From March 21, 2006 to June 27, 2007,
23 patient GK received 21 pints of Phenergran with Codeine, but if taken as ordered, the patient
24 would have only needed 17 pints. By refilling the prescriptions early, the patient received 4 extra
25 pints of Phenergran with Codeine.

26 ///

27 ///

28 ///

Rx date	Rx filled	Rx #	Patient	Amount	Directions	Days supply	Days early	MD	Refills?	Script?	Refills OK on script?	MD OK'd?
	3/21/06	128917	GK	473	1 tsp tid	31		Nasir	none	script		Yes
3/21/06	3/21/06	126919	GK	473				Nasir		no script		Yes
4/17/06	4/27/06	127168	GK	473	1 tsp tid	31	30	Nasir	3	script		No
4/17/06	5/4/06	127168	GK	473	1 tsp tid	31	23	Nasir		script		No
4/17/06	6/20/06	127168	GK	473	1 tsp tid	31		Nasir		script		No
4/17/06	7/13/06	127168	GK	473	1 tsp tid	31		Nasir		script		No
3/21/06	8/7/06	126917	GK	473			5	Nasir		no script		Yes
3/21/06	9/6/06	126917	GK	473				Nasir		no script		No
10/5/06	10/5/06	130244	GK	473	2 tsp tid	15		Nasir	none	oral		No
10/5/06	11/8/06	130244	GK	473	2 tsp tid	15		Nasir		oral	unauthorized	No
10/5/06	11/27/06	130244	GK	473	2 tsp tid	15		Nasir		oral	unauthorized	Yes
12/20/06	12/20/06	131527	GK	473	1 tsp tid	31		Nasir	none	script		Yes
1/6/07	1/6/07	132510	GK	473	1 tsp tid	31	13	Nasir	none	script		Yes
1/25/07	1/26/07	132722	GK	473	1 tsp tid	31	10	Nasir	none	script		Yes
2/6/07	2/6/07	132955	GK	473	1 tsp tid	31	19	Nasir	none	script		Yes
2/6/07	2/15/07	132955	GK	473	1 tsp tid	31	21	Nasir		script	unauthorized	No
3/1/07	3/1/07	133534	GK	473	1 tsp tid	31	16	Nasir	1	script		No
3/12/07	3/12/07	133813	GK	473	1 tsp tid	31	19	Nasir	none	script		Yes
4/17/07	4/17/07	134826	GK	473	1 tsp tid	31		Nasir	none	script		Yes
5/29/07	5/29/07	135845	GK	473	1 tsp tid	31		Nasir	none	script		Yes
6/21/07	6/27/07	136695	GK	473	1 tsp tid	31		Nasir	none	script		Yes

FIFTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

50. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300, 4301, and 4302, for committing unprofessional conduct, as more fully discussed in paragraphs 34 through 49, above.

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1 OTHER MATTERS

2 51. Business and Professions Code section 4307, subdivision (a) provides, in
3 pertinent part, that any person whose license has been revoked or is under suspension, or who has
4 failed to renew his or her license while it was under suspension, or who has been manager,
5 administrator, owner, member, officer, director, associate, or partner had knowledge of or
6 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
7 placed on probation, shall be prohibited from serving as a manager, administrator, owner,
8 member, officer, director, associate, or partner of a licensee.

9 PRAYER

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

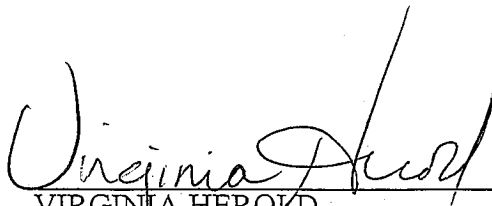
12 A. Revoking or suspending Pharmacy Permit Number PHY 47485, issued to
13 Garos Pharmacy.

14 B. Revoking or suspending Pharmacist License Number RPH 56808, issued
15 to Madlen Basilyan.

16 C. Ordering Garos Pharmacy and Madlen Basilyan to pay the Board of
17 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
18 Business and Professions Code section 125.3;

19 D. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 6/23/09

22
23 
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant