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

In the Matter of the Accusation Against: **NEW AGE PHARMACEUTICALS, INC.**; **CATHERINE A. YOUSSEFYEH** (**CEO**, **CFO**, **Treasurer**); **SHAHLA KEYVANFAR MELAMED** (**Secretary**) 1147 S. Beverly Dr. #B Los Angeles, CA 90035 **Original Permit No. PHY 48626** And **CATHERINE AFSOON YOUSSEFYEH** **PHARMACIST-IN-CHARGE** 9663 Santa Monica Blvd. Ste. 835 Beverly Hills, CA 90210 **Pharmacist License No. RPH 55694** And **TIMOTHY LOPEZ** 907 N. Atlantic Blvd. Alhambra, CA 91801 **Pharmacist License No. RPH 48887** Respondents.	Case No. 5252 **SECOND AMENDED ACCUSATION**

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Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Second Amended Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

A. New Age Pharmaceuticals, Inc. (PHY 48626)

2. On May 9, 2007, the Board of Pharmacy issued Original Permit Number PHY 48626 to New Age Pharmaceuticals, Inc. (Respondent New Age Pharmaceuticals). The Original Permit was in full force and effect at all times relevant to the charges brought herein, but the permit expired on May 1, 2017. Notwithstanding the expiration of the permit, the Board retains jurisdiction in this matter pursuant to Business and Professions Code section 4300.1.

3. Catherine Afsoon Youssefyeh (Respondent Youssefyeh) has been the Chief Executive Officer of Respondent New Age Pharmaceuticals since May 9, 2007. She has been the Treasurer and Chief Financial Officer since May 27, 2009. In addition, Respondent Youssefyeh has been the Pharmacist-in-Charge since May 9, 2007.

4. Shahla Keyvanfar Melamed has been the Secretary of Respondent New Age Pharmaceuticals since May 9, 2007. On August 19, 1988, the Board issued her Pharmacist License Number RPH 42096. On July 29, 2015, she entered into a stipulated settlement agreement in another matter by which she voluntarily surrendered her license. The Board adopted the agreement on October 7, 2015, and the Board's decision became effective on November 6, 2015. Under the Board's decision, Shahla Keyvanfar Melamed is prohibited from serving as a manager, administrator, owner of ten percent or more of the permit holder's corporate stock, member, officer, director, associate, or partner of a licensee until such time as her license is reinstated or she is issued a new license by the Board. (*Accusation Against Roxsan Pharmacy and Shahla Keyvanfar Melamed*, 2015, No. 5455.) The surrendered license (RPH 42096) has not been reinstated, nor has the Board issued a new license to Shahla Keyvanfar Melamed.

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B. Catherine Afsoon Youssefyeh (RPH 55694)

5. On July 13, 2004, the Board of Pharmacy issued Pharmacist License Number RPH 55694 to Respondent Youssefyeh. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2018 unless it is renewed.

C. Timothy Lopez (RPH 48887)

6. On August 14, 1996, the Board of Pharmacy issued Pharmacist License Number RPH 48887 to Timothy Lopez (Respondent Lopez). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2018 unless it is renewed.

JURISDICTION

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

8. Code section 4300 states that every license may be suspended or revoked.

9. Code section 4300.1 states:

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

STATUTES

10. Code section 4022 states:

> "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
>
> (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
>
> (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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

11. Code section 4036.5 states:

"Pharmacist-in-charge" means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

12. Code section 4040 states in pertinent part:

(a) "Prescription" means an oral, written, or electronic transmission order that is both of the following:

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

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

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

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

(E) A legible, clear notice of the condition or purpose for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to Section 4052.1, 4052.2, or 4052.6.

(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this state, or pursuant to Section 4052.1, 4052.2, or 4052.6 by a pharmacist licensed in this state.

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13. Code section 4059 states in pertinent part:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

14. Code section 4059.5 states in pertinent part:

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to a person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous devices is authorized by law to receive the dangerous drugs or dangerous devices.

15. Code section 4081 states in pertinent part:

(a) 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 manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment 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.

16. Code section 4113 states in pertinent part:

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

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17. Code section 4301 states in pertinent part:

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

…

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

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

…

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

18. Code section 4302 states:

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

19. Code section 4307 states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under 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 manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of 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, partner, or

in any other 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.

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

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

20. Code section 4342 states:

(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

(b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006 shall be subject to punishment in the same manner as is provided in Sections 4321 and 4336.

REGULATIONS

21. California Code of Regulations, title 16, section 1714 states in pertinent part:

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

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(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

22. California Code of Regulations, title 16, section 1716 states:

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

Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

23. California Code of Regulations, title 16, section 1717.4 states:

(a) Except as otherwise prohibited by law, prescriptions may be transmitted by electronic means from the prescriber to the pharmacy.

(b) An electronically transmitted prescription which meets the requirements of this regulation shall be deemed to be a prescription within the meaning of Business and Professions Code section 4040.

(c) An electronically transmitted prescription order shall include the name and address of the prescriber, a telephone number for oral confirmation, date of transmission and the identity of the recipient, as well as any other information required by federal or state law or regulations. The prescriber's address, license classification and federal registry number may be omitted if they are on file and readily retrievable in the receiving pharmacy.

(d) An "interim storage device" means as electronic file into which a prescription is entered for later retrieval by an authorized individual. Any interim storage device shall, in addition to the above information, record and maintain the date of entry and/or receipt of the prescription order, date of transmission from the interim storage device and identity of the recipient of such transmission. The interim storage device shall be maintained so as to ensure against unauthorized access and use of prescription information, including dispensing information.

(e) A pharmacy receiving an electronic image transmission prescription shall either receive the prescription in hard copy form or have the capacity to retrieve a hard copy facsimile of the prescription from the pharmacy's computer memory. Any hard copy of a prescription shall be maintained on paper of permanent quality.

(f) An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice. This requirement shall not apply to orders for medications to be administered in an acute care hospital.

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

"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.

25. California Code of Regulations, title 16, section 1735.1 states in pertinent part

(y) "Potency" means active ingredient strength within +/- 10% (or the range specified in USP37-NF32, 37th Revision, Through 2nd Supplement Effective December 1, 2014) of the labeled amount. Sterile injectable products compounded solely from commercially manufactured sterile pharmaceutical products in a health care facility licensed under section 1250 of the Health and Safety Code are exempt from this definition. For those exempt, the range shall be calculated and defined in the master formula.

26. California Code of Regulations, title 16, section 1735.6 states in pertinent part:

(c) Any equipment that weighs, measures, or transfers ingredients used to compound drug preparations for which calibration or adjustment is appropriate shall be calibrated prior to use, on a schedule and by a method determined by the manufacturer's specifications, to ensure accuracy. Documentation of each such calibration shall be recorded in a form which is not alterable and these records of calibration shall be maintained and retained in the pharmacy.

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

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

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

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

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

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

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the 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.

OTHER STATES' PHARMACY LAWS

CONNECTICUT

29. Connecticut General Statutes section 20-628 states:

No nonresident pharmacy shall engage in the business of shipping, mailing or delivering legend devices or legend drugs in this state unless such nonresident pharmacy has been issued a certificate of registration by the commission and has paid the fee for issuance or renewal of such certificate of registration required in section 20-601. Applications for a certificate of registration as a nonresident pharmacy shall be made on a form furnished by the commission. The commission may require such information as it deems reasonably necessary to carry out the purpose of this section.

FLORIDA

30. Florida Statutes section 465.0156 states in pertinent part:

(1) Any pharmacy which is located outside this state and which ships, mails, or delivers, in any manner, a dispensed medicinal drug into this state shall be considered a nonresident pharmacy, shall be registered with the board, shall provide pharmacy services at a high level of protection and competence, and shall disclose to the board the following specific information:

(a) That it maintains at all times a valid, unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which the dispensing facility is located and from which the medicinal drugs shall be dispensed;

(b) The location, names, and titles of all principal corporate officers and the pharmacist who serves as the prescription department manager for dispensing medicinal drugs to residents of this state. This disclosure shall be made within 30 days after any change of location, corporate officer, or pharmacist serving as the prescription department manager for dispensing medicinal drugs to residents of this state;

(c) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of all states in which it is licensed as well as with all requests for information made by the board pursuant to this section. It shall respond directly to all communications from the board concerning emergency circumstances arising from errors in the dispensing of medicinal drugs to the residents of this state;

(d) That it maintains its records of medicinal drugs dispensed to patients in this state so that the records are readily retrievable from the other business records of the pharmacy and from the records of other medicinal drugs dispensed; and

(e) That during its regular hours of operation but not less than 6 days per week, for a minimum of 40 hours per week, a toll-free telephone service shall be provided to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed medicinal drugs.

…

(7) It is unlawful for any nonresident pharmacy which is not registered pursuant to this section to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

(8) This section does not apply to Internet pharmacies required to be permitted under s. 465.0197.

(9) Notwithstanding s. 465.003(10), for purposes of this section, the registered pharmacy and the pharmacist designated by the registered pharmacy as the prescription department manager or the equivalent must be licensed in the state of location in order to dispense into this state.

HAWAII

31. Hawaii Revised Statutes section 329-32 states in pertinent part:

(a) Every person who:

(1) Manufactures, distributes, prescribes, dispenses, or conducts reverse distribution with any controlled substance within this State;

(2) Proposes to engage in the manufacture, distribution, prescription, dispensing, or reverse distribution of any controlled substance within this State; or

(3) Dispenses or proposes to dispense any controlled substance for use in this State by shipping, mailing, or otherwise delivering the controlled substance from a location outside this State;

shall obtain a registration issued by the department of public safety in accordance with the department's rules. A licensed or registered health care professional who acts as the authorized agent of a practitioner and who administers controlled substances at the direction of the practitioner shall not be required to obtain a registration.

32. Hawaii Revised Statues section 461-15 states in pertinent part:

(a) It shall be unlawful:

…

(7) For any out-of-state pharmacy or entity engaging in the practice of pharmacy, in any manner to distribute, ship, mail, or deliver prescription drugs or devices into the State without first obtaining a permit from the board; provided that the applicant shall:

(A) Provide the location, names, and titles of all principal corporate officers;

(B) Attest that the applicant or any personnel of the applicant has not been found in violation of any state or federal drug laws, including the illegal use of drugs or improper distribution of drugs;

(C) Submit verification of a valid unexpired license, permit, or registration in good standing to conduct the pharmacy in compliance with the laws of the home state and agree to maintain in good standing the license, permit, or registration; and

(D) Have in its employ a registered pharmacist whose registration is current and in good standing.

ILLINOIS

33. Illinois Administrative Code, title 68, section 1330.550, states in pertinent part:

a) The Division shall require and provide for an annual nonresident special pharmacy registration for all pharmacies located outside of this State that dispense medications for Illinois residents and mail, ship or deliver prescription medications into this State, including home pharmacies of remote pharmacies located in Illinois that are located outside of Illinois. Unless there is a direct conflict between Illinois pharmacy law and the pharmacy laws of the state in which the nonresident pharmacy is located, nonresident pharmacies shall abide by all Illinois laws and rules when

filling prescriptions for Illinois residents, except that pharmacists employed at those pharmacies and the pharmacist-in-charge of those pharmacies shall not be required to be licensed in Illinois except as otherwise provided in this Part.

MARYLAND

34. Maryland Health Occupations Code section 12-403 states in pertinent part:

(e) Nonresident pharmacy to hold permit and have licensed pharmacist on staff designated as responsible for in-State services. -- A nonresident pharmacy shall:

(1) Hold a pharmacy permit issued by the Board; and

(2) Have a pharmacist on staff who is:

(i) Licensed by the Board; and

(ii) Designated as the pharmacist responsible for providing pharmaceutical services to patients in the State.

MICHIGAN

35. Michigan Public Health Code section 333.17748 states in pertinent part:

(1) To do business in this state, a pharmacy, manufacturer, or wholesale distributor, whether or not located in this state, must be licensed under this part. To do business in this state, a person that provides compounding services must be licensed as a pharmacy or manufacturer under this part and, if a pharmacy, authorized to provide compounding services under this section and sections 17748a and 17748b. To do business in this state, an outsourcing facility must be licensed as a pharmacy under this part. Licenses are renewable biennially.

MISSOURI

36. Missouri Code of State Regulations, title 20, section 2220-2.025 states in pertinent part:

(1) Nonresident pharmacies shall not ship, mail or deliver prescription drugs into Missouri without first obtaining a pharmacy license from the Missouri Board of Pharmacy. An exemption to licensure is allowed when a nonresident pharmacy provides a prescription drug in an emergency situation or supplies lawful refills to a patient from a prescription that was originally filled and delivered to a patient within the state in which the nonresident pharmacy is located or provides medications upon receipt of a prescription or physician order for patients in institutional settings and the nonresident pharmacy is not recognized as a primary provider.

NEVADA

37. Nevada Revised Statutes section 639.2328 states in pertinent part:

1. Every pharmacy located outside Nevada that provides mail order service to or solicits or advertises for orders for drugs available with a prescription from a resident of Nevada must be licensed by the Board.

NEW YORK

38. New York Education Law section 6808-b states in pertinent part:

2. Registration. All nonresident establishments that ship, mail, or deliver prescription drugs and/or devices to other registered establishments, authorized prescribers, and/or patients into this state shall be registered with the department; except that such registration shall not apply to intra-company transfers between any division, affiliate, subsidiaries, parent or other entities under complete common ownership and control. The provisions of this subdivision shall apply solely to nonresident establishments and shall not affect any other provision of this article.

OKLAHOMA

39. Oklahoma Administrative Code section 535:15-3-9 states in pertinent part:

(b) Licensing requirements. A non-resident pharmacy shall:

(1) make application and receive an annual non-resident pharmacy license at a fee set by the Board.

TEXAS

40. Texas Occupations Code section 560.001 states:

(a) A person may not operate a pharmacy in this state unless the pharmacy is licensed by the board.

(b) A pharmacy located in another state may not ship, mail, or deliver to this state a prescription drug or device dispensed under a prescription drug order, or dispensed or delivered as authorized by Subchapter D, Chapter 562, unless the pharmacy is licensed by the board or is exempt under Section 560.004.

(c) A pharmacy located in Canada may not ship, mail, or deliver to this state a prescription drug dispensed under a prescription drug order to a resident of this state unless the pharmacy is designated by the board under Section 554.016.

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41. Texas Occupations Code section 560.004 states:

> The board may grant an exemption from the licensing requirements of this chapter on the application of a pharmacy located in another state that restricts to isolated transactions the pharmacy's dispensing of a prescription drug or device to a resident of this state.

VIRGINIA

42. Virginia Code section 54.1-3434.1 states in pertinent part:

> A. Any pharmacy located outside the Commonwealth that ships, mails, or delivers, in any manner, Schedule II through VI drugs or devices pursuant to a prescription into the Commonwealth shall be considered a nonresident pharmacy, shall be registered with the Board, shall designate a pharmacist in charge who is licensed as a pharmacist in Virginia and is responsible for the pharmacy's compliance with this chapter, and shall disclose to the Board all of the following…

DRUG CLASSIFICATIONS

43. Ketoprofen (NAP) cream L is a topical analgesic and a dangerous drug within the meaning of Code section 4022.

44. Ketamine 10%/ gabapentin 6%/ nifedipine 7%/ pentoxifylline 5%/ lidocaine 3%/ clonidine 0.2% (KGNPLC) is a compounded preparation which is a dangerous drug within the meaning of Code section 4022 and a Schedule III controlled substance pursuant to California Health and Safety Code section 11056, subdivision (g), and Hawaii Uniform Controlled Substances Act, section 329-18, subdivision (c)(6).

45. Ketamine 10% cream is a dangerous drug within the meaning of Code section 4022 and a Schedule III controlled substance pursuant to California Health and Safety Code section 11056, subdivision (g).

46. Ketamine 10%/ baclofen 2%/ cyclobenzaprine 2%/ flurbiprofen 10%/ gabapentin 6%/ lidocaine 5% (KBCFGL) is a compounded preparation which is a dangerous drug within the meaning of Code section 4022 and a Schedule III controlled substance pursuant to California Health and Safety Code section 11056, subdivision (g).

47. Flurbiprofen 10%/ baclofen 2%/ cyclobenzaprine 2%/ gabapentin 6%/ lidocaine 2% (FBCGL) is a compounded preparation which is a dangerous drug within the meaning of Code section 4022.

48. Flurbiprofen 20%/ lidocaine 5%/ amitriptyline 5% is a compounded preparation which is a dangerous drug within the meaning of Code section 4022.

49. Hydrocodone/APAP 10/325 mg, also known by the brand name Norco, is a dangerous drug within the meaning of Code section 4022 and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057.

50. Hydrocodone/ibuprofen 7.5/200 mg, also known by the brand name Vicoprofen, is a dangerous drug within the meaning of Code section 4022 and a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

51. Acetaminophen/codeine 300/30 mg, also known by the brand name Tylenol No. 3, is a dangerous drug pursuant to Code section 4022 and a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

52. Carisoprodol 350 mg, also known by the brand name Soma, is a dangerous drug within the meaning of Code section 4022 and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057.

53. Zolpidem 10 mg, also known by the brand name Ambien, is a dangerous drug within the meaning of Code section 4022 and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057.

COST RECOVERY

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

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COMPLAINT INVESTIGATION #1

55. From on or about May 9, 2007 to the present, Respondent Youssefyeh has been Respondent New Age Pharmaceuticals's Pharmacist-in-Charge.

56. On or about July 19, 2012, Dr. M.P. faxed to "Valley View Drugs" a prescription for Patient A.M. for Terocin local transdermal lotion 120 g. He authorized three refills. Dr. M.P. used a preprinted form containing a fax number that, unbeknownst to him, did not belong to Valley View Drugs, but instead belonged to a sales representative who worked with New Age Pharmaceuticals. The sales representative had formerly worked with Valley View Drugs, where he was responsible for promoting that pharmacy's services to Dr. M.P.

57. Although Patient A.M.'s prescription for Terocin 120 g was faxed on a form that said "Valley View Drugs," the prescription was sent to New Age Pharmaceuticals instead.

58. The same day, Dr. M.P. faxed to "Valley View Drugs" a second prescription, for another patient, Patient K.W., for Terocin local transdermal lotion 120 g. He authorized four refills. As before, the form that the doctor used contained a fax number that did not belong to Valley View Drugs, but instead belonged to New Age Pharmaceuticals's sales representative.

59. Patient K.W.'s Terocin prescription, although addressed to "Valley View Drugs," was sent to New Age Pharmaceuticals instead.

60. Sometime between July 19, 2012 and July 30, 2012, Respondent New Age Pharmaceuticals completed two preprinted forms, each entitled "Workers' Compensation RX Form," one in the name of Patient A.M. and the other in the name of Patient K.W. On each form, Respondent New Age Pharmaceuticals fraudulently documented that Dr. M.P. prescribed 240 milliliters of Terocin; 90 capsules of Genicin; 180 grams of Ketoprofen (NAP) Cream-L; 30 capsules of Somnicin; and 100 tablets of Laxacin. A space reserved for the physician's signature and a date were left blank on both forms. By contrast, the actual prescriptions that Dr. M.P. faxed bore his signature and a date.

61. On or about July 30, 2012, Respondent Lopez dispensed to Patients A.M. and K.W. each of 240 milliliters of Terocin; 90 capsules of Genicin 500 mg; 180 grams of Ketoprofen (NAP) Cream-L; 30 capsules of Somnicin; and 100 tablets of Laxacin. Respondent Lopez

dispensed these drugs based on the unsigned and undated Workers' Compensation RX Forms.

62. On or about December 18, 2012, the Board received a written complaint from Dr. M.P. indicating that he prescribed only 120 grams of Terocin to Patients A.M. and K.W. for pain relief, but when he saw the patients for follow-up visits, he learned that they had received other medications that he did not authorize.

63. On or about September 5, 2013, a Board inspection of Respondent New Age Pharmaceuticals revealed that New Age Pharmaceuticals received prescriptions by electronic means through intermediaries instead of receiving prescriptions directly from the prescriber, as required. Several prescriptions were transmitted from persons other than the prescriber, including a sales representative, to a pharmacist's e-mail account and were then forwarded to Respondent New Age Pharmaceuticals.

64. In particular, on or about July 5, 2012, seven prescriptions from Dr. P.L. were not transmitted directly from the doctor to the pharmacy, but instead were routed through an intermediary. On or about June 22, 2012, one prescription from Dr. R.B. was transmitted through an intermediary. On or about April 27, 2012 one prescription from Dr. N.G. was transmitted through an intermediary. Finally, between July 19, 2012 and July 30, 2012, Patient A.M.'s and Patient K.W.'s prescriptions were transmitted through an intermediary instead of being sent directly from the prescriber to the pharmacy.

FIRST CAUSE FOR DISCIPLINE

(Commission of Moral Turpitude, Dishonesty, Fraud, Deceit, Corruption)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

65. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (f), for unprofessional conduct in that they committed acts of moral turpitude, dishonesty, fraud, deceit or corruption. Specifically, on or about July 30, 2012, Respondent New Age Pharmaceuticals accepted two prescriptions that were not addressed to New Age Pharmaceuticals, but instead were addressed to "Valley View Pharmacy." Respondent New Age Pharmaceuticals fraudulently prepared two forms that falsely indicated that Dr. M.P. prescribed medications for Patients A.M. and K.W, which, in fact, he did

not prescribe. The unprescribed drugs were then dispensed based on these fraudulent records.

66. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to prevent the creation of fraudulent prescription records and to ensure that the pharmacy and its pharmacists dispensed medications only upon a valid prescription. Complainant realleges paragraphs 43 through 53 and 55 through 65.

SECOND CAUSE FOR DISCIPLINE

(Knowing Falsification of a Document)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

67. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (g), for unprofessional conduct in that they knowingly made a document that falsely represented the existence or nonexistence of a state of facts. In particular, between July 19, 2012 and July 30, 2012, Respondent New Age Pharmaceuticals completed two preprinted forms, each entitled "Workers' Compensation RX Form," one in the name of Patient A.M. and the other in the name of Patient K.W. On each form, Respondent New Age Pharmaceuticals fraudulently documented that Dr. M.P. prescribed 240 milliliters of Terocin; 90 capsules of Genicin; 180 grams of Ketoprofen (NAP) Cream-L; 30 capsules of Somnicin; and 100 tablets of Laxacin. A space reserved for the physician's signature and a date were left blank on both forms.

68. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that Respondent New Age Pharmaceuticals did not knowingly create a document that falsely represented the existence or nonexistence of a state of facts. Complainant realleges paragraphs 43 through 53 and 55 through 67.

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THIRD CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without a Prescription)

(As to All Respondents)

69. Respondents are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a provision of the Pharmacy Law, to wit, Code section 4059, subdivision (a), which prohibits a person from furnishing a dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

70. Respondents violated this provision by furnishing the dangerous drug Ketoprofen (NAP) cream to Patients A.M. and K.W. on or about July 30, 2012 without a valid prescription.

71. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that only valid prescriptions were dispensed. Complainant realleges paragraphs 43 through 53 and 55 through 70.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Board Regulation Governing Electronic Transmission of Prescriptions)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

72. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a Board regulation, to wit, California Code of Regulations, title 16, section 1717.4, subdivisions (a) and (f). Subdivision (a) requires prescriptions that are transmitted by electronic means to travel directly from the prescriber to the pharmacy. Subdivision (f) requires electronically transmitted prescriptions to be transmitted only to the pharmacy of the patient's choice.

73. Respondent New Age Pharmaceuticals and Respondent Youssefyeh violated California Code of Regulations, title 16, section 1717.4, subdivisions (a) and (f), by accepting prescriptions that were electronically transmitted through an intermediary, and by accepting and dispensing two electronically transmitted prescriptions that were addressed to Valley View

Pharmacy and not New Age Pharmaceuticals.

74. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that prescriptions transmitted by electronic means originated with the doctor and were transmitted directly to the pharmacy. Complainant realleges paragraphs 43 through 53 and 55 through 73.

COMPLAINT INVESTIGATION #2

75. On or about August 5, 2014, the Board received a written complaint from a pharmacist in Hawaii alleging that Respondent New Age Pharmaceuticals dispensed prescriptions to Hawaii consumers without a pharmacy license from the Hawaii Board. In response to this complaint, Board inspectors conducted an inspection of New Age Pharmaceuticals on or about January 23, 2015.

76. During the inspection of Respondent New Age Pharmaceuticals, Board inspectors requested a detailed drug dispensing report for prescriptions dispensed to patients located in Hawaii from January 20, 2012 to January 23, 2015. On or about January 30, 2015, the Board received the requested prescription dispensing report for Hawaii consumers from Respondent Youssefyeh. The report revealed that Respondent New Age Pharmaceuticals sold, dispensed and delivered 26 prescriptions to patients residing in the state of Hawaii, as follows:

Date	RX#	Drug	Patient	State
5/31/13	160461	FBCGL 20/2/2/6/2	AF	HI
6/14/13	164561	FBCGL 20/2/2/6/2	TS	HI
6/20/13	165507	FBCGL 20/2/2/6/2	ES	HI
6/26/13	166613	FBCGL 20/2/2/6/2	VO	HI
6/27/13	166367	FBCGL 20/2/2/6/2	PG	HI
7/12/13	170368	FBCGL 20/2/2/6/2	CF	HI
7/16/13	171305	FBCGL 20/2/2/6/2	JP	HI
7/17/13	172263	FBCGL 20/2/2/6/2	KT	HI
7/25/13	174867	KGNPLC 10/6/7/5/3/0.2	BS	HI
8/1/13	160461	FBCGL 20/2/2/6/2	AF	HI
8/1/13	175971	FBCGL 20/2/2/6/2	EU	HI
8/12/13	179010	FBCGL 20/2/2/6/2	WP	HI
8/15/13	180143	Ketamine 10%	JP	HI
8/30/13	174867	KGNPLC	BS	HI

Date	RX#	Drug	Patient	State
		10/6/7/5/3/0.2		
9/11/13	166367	FBCGL 20/2/2/6/2	PG	HI
9/16/13	180143	Ketamine 10%	JP	HI
10/4/13	174867	KGNPLC 10/6/7/5/3/0.2	BS	HI
10/7/13	180143	Ketamine 10%	JP	HI
11/19/13	174867	KGNPLC 10/6/7/5/3/0.2	BS	HI
1/23/14	220190	Ketamine 10%	JP	HI
2/6/14	222735	KGNPLC 10/6/7/5/3/0.2	BS	HI
3/10/14	175971	FBCGL 20/2/2/6/2	EU	HI
3/20/14	229064	FBCGL 20/2/2/6/2	PH	HI
4/2/14	230726	KBCFGL 10/2/2/10/6/5	YL	HI
5/2/14	233492	KBCFGL 10/2/2/10/6/5	HH	HI
5/6/14	233712	FBCGL 20/2/2/6/2	DY	HI

77. During the inspection of Respondent New Age Pharmaceuticals, Board inspectors reviewed potency test results conducted by Analytical Research Laboratories. A sample of flurbiprofen 20% / lidocaine 5% / amitriptyline 5% from lot number 12032014 was sent for testing on or about December 9, 2014. Analytical Research Laboratories reported the following results on December 19, 2014. The results show that amitriptyline deviated from its expected potency by more than the acceptable range of ten percent.

Compound	Date Prepared	Lot#	Test Results	Test Date
Flurbiprofen 20%/ Lidocaine 5%/ Amitriptyline 5%	12/3/14	12032014 @1	Amitriptyline 84.1% of expected	12/15/14
			Amitriptyline Average 85.3% of expected	12/9/14
			Amitriptyline Rerun 86.6% of expected	12/9/14
			Flurbiprofen 88% of expected	12/15/14
			Flurbiprofen Average 89.6% of expected	12/15/14
			Flurbiprofen Rerun 91.3% of expected	12/15/14
			Lidocaine 91.5% of expected	12/16/14

78. Between December 14, 2014 and January 9, 2015, Respondent New Age Pharmaceuticals dispensed 155 prescriptions of flurbiprofen 20% / lidocaine 5% / amitriptyline 5% from lot number 12032014 when one of the ingredients (amitriptyline) was less than the labeled strength and potency. In particular, Respondent New Age Pharmaceuticals dispensed 27 of these prescriptions from December 15, 2014 to December 18, 2014, but failed to take appropriate action once it was discovered that the preparation did not conform to its labeled strength and potency. Once the lab results were reported on December 19, 2014, Respondent New Age Pharmaceuticals dispensed 128 preparations from the affected lot, knowing that those prescriptions did not conform to their labeled strength and potency.

79. Respondent New Age Pharmaceuticals did not recall the affected prescriptions on its own accord, but only at the Board's direction. The lot was finally recalled on or about January 30, 2015.

80. During the inspection of the compounding area of Respondent New Age Pharmaceuticals, Board inspectors asked to review the daily scale calibrations. A pharmacy technician stated there was no record of daily scale calibrations because the scales were not calibrated daily.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Law Regarding Out-of-State Sales)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

81. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a provision of the Pharmacy Law, to wit, section 4059.5, subdivision (e), which prohibits the transfer, sale or delivery of a dangerous drug or dangerous device to a person outside this state unless the transferor, seller or deliverer does so in compliance with California and federal law and the law of the state to which the dangerous drug or dangerous device is transferred, sold or delivered.

82. Between May 31, 2013 and May 6, 2014, Respondent New Age Pharmaceuticals sold, dispensed and shipped 26 prescriptions for dangerous drugs (some of which were also

controlled substances) to Hawaii consumers without first obtaining a non-resident pharmacy permit from the Hawaii State Board of Pharmacy or a controlled substance registration from the Hawaii State Narcotic Division, as required by Hawaii Revised Statutes sections 461-15 and 329-32.

83. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that dangerous drugs and devices were not delivered to other states in violation of law. Complainant realleges paragraphs 43 through 53 and 75 through 82.

SIXTH CAUSE FOR DISCIPLINE

(Violation of State Drug Statutes)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

84. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (j), for unprofessional conduct in that they violated California and Hawaii statutes regulating controlled substances and dangerous drugs.

85. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that dangerous drugs and devices were not delivered to other states in violation of other states' or California law. Complainant realleges paragraphs 43 through 53 and 75 through 84.

SEVENTH CAUSE FOR DISCIPLINE

(Variation from Prescription)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

86. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a provision of the Pharmacy Law, to wit, Code section 4342, which provides that the Board may institute action to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength provided in the latest edition of the United States Pharmacopoeia or the National Formulary or that violate any provision of the

Sherman Food, Drug, and Cosmetic Law.

87. Further, Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a Board regulation, to wit, California Code of Regulations, title 16, section 1716, which prohibits a pharmacist from deviating from the requirements of a prescription except upon the prior consent of the prescriber.

88. In particular, between December 14, 2014 and January 9, 2015, Respondent New Age Pharmaceuticals dispensed 155 prescriptions of flurbiprofen 20% / lidocaine 5% / amitriptyline 5% from lot number 12032014, which lot was tested and found not to conform to the labeled strength and potency; therefore, the dispensed prescriptions from that lot did not conform to the prescribed dosage.

89. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that prescriptions were dispensed in the proper potency and strength and without deviating from the requirements of the prescription. Complainant realleges paragraphs 43 through 53 and 75 through 88.

EIGHTH CAUSE FOR DISCIPLINE

(Compounding Facilities and Equipment)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

90. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a Board regulation, to wit, California Code of Regulations, title 16, section 1735.6, subdivision (c), which requires that all equipment used to weigh, measure or transfer ingredients used to compound drug preparations be calibrated prior to being used on a schedule and by a method determined by the manufacturer's specifications to ensure accuracy. It also requires documentation and maintenance of records of each such calibration.

91. Respondent New Age Pharmaceuticals and Respondent Youssefyeh failed to calibrate their balance scales prior to each use and therefore failed to document and preserve

documentation of daily scale calibrations.

92. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that the pharmacy's weighing and measuring equipment was properly calibrated, that such calibrations were documented, and that that documentation was kept by the pharmacy. Complainant realleges paragraphs 43 through 53 and 75 through 91.

COMPLAINT INVESTIGATION # 3

93. On or about April 24, 2015, the Board received a complaint from a Nevada Board investigator. In response, on or about November 5, 2015, a Board inspector conducted a complaint investigation of Respondent New Age Pharmaceuticals.

94. During the investigation of Respondent New Age Pharmaceuticals, the Board inspector requested and obtained a detailed drug dispensing report for prescriptions dispensed to patients located in Connecticut, Florida, Illinois, Maryland, Michigan, Missouri, Nevada, New York, Oklahoma, Texas and Virginia from on or about January 4, 2013 to March 26, 2015.

95. The report identified 2,675 prescriptions, consisting of both dangerous drugs and controlled substances, which were dispensed to patients in the following states:

State	Prescriptions Delivered
Connecticut	25
Florida	1,163
Illinois	70
Maryland	463
Michigan	118
Missouri	8
Nevada	85
New York	332
Oklahoma	31
Texas	190

State	Prescriptions Delivered
Virginia	190

96. Connecticut, Florida, Illinois, Maryland, Michigan, Missouri, Nevada, New York, Oklahoma, Texas and Virginia all require licensure, registration, or an approved exemption (Texas) for a nonresident pharmacy before the nonresident pharmacy can engage in the business of shipping, mailing or delivering dangerous drugs or controlled substances into those states. Respondent New Age Pharmaceuticals was not licensed by or registered with the boards of pharmacy of any of the above-mentioned states, nor did Respondent New Age Pharmaceuticals benefit from an exemption to any licensure or registration requirement.

97. Respondent New Age Pharmaceuticals dispensed the prescriptions described in paragraph 95 without complying with the laws of the states to which the prescriptions were delivered.

NINTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Law Regarding Out-of-State Sales)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

98. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a provision of the Pharmacy Law, to wit, section 4059.5, subdivision (e), which prohibits the transfer, sale or delivery of a dangerous drug or dangerous device to a person outside this state unless the transferor, seller or deliverer does so in compliance with California and federal law and the law of the state to which the dangerous drug or dangerous device is transferred, sold or delivered.

99. Between approximately January 4, 2013 and March 26, 2015, Respondent New Age Pharmaceuticals and Respondent Youssefyeh sold, dispensed and shipped 2,675 prescriptions for dangerous drugs (some of which were also controlled substances) to consumers in eleven states in violation of those states' pharmacy laws.

100. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in

question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that dangerous drugs and devices were not delivered to other states in violation of other states' or California law. Complainant realleges paragraphs 43 through 53 and 93 through 99.

TENTH CAUSE FOR DISCIPLINE

(Violation of State Drug Statutes)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

101. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (j), for unprofessional conduct in that they violated California and other states' laws regulating controlled substances and dangerous drugs.

102. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that dangerous drugs and devices were not delivered to other states in violation of other states' or California law. Complainant realleges paragraphs 43 through 53 and 93 through 101.

COMPLAINT INVESTIGATION #4

103. On or about November 30, 2015, the Board received a complaint. On or about May 4, 2016, Board inspectors completed an inspection of Respondent New Age Pharmaceuticals. They discovered that a pharmacy clerk was in possession of the key to the pharmacy office where the pharmacy computers and prescription records were stored. In addition, a pharmacy technician and another pharmacy clerk were in the pharmacy office and had access to the pharmacy computer system and prescription files. Access to the pharmacy computer system included the ability to generate new prescriptions. No pharmacist was on duty in the pharmacy at the time.

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ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Pharmacy Security and Pharmacy Key)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

104. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a Board regulation, to wit, California Code of Regulations, title 16, section 1714, subdivisions (b) and (d). Subdivision (b) requires licensed pharmacies to maintain their facilities, space fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. Subdivision (d) requires each on-duty pharmacist to be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. The key to the pharmacy where dangerous drugs and controlled substances are stored is restricted to a pharmacist.

105. Respondent New Age Pharmaceuticals and Respondent Youssefyeh violated California Code of Regulations, title 16, section 1714, subdivisions (b) and (d), by allowing a non-pharmacist to possess the pharmacy key and by allowing three non-pharmacists to have access to the pharmacy when a pharmacist was not present.

106. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure compliance with California Code of Regulations, title 16, section 1714, subdivisions (b) and (d). Complainant realleges paragraphs 43 through 53 and 103 through 105.

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COMPLAINT INVESTIGATION #5

107. On or about July 1, 2015, Respondent New Age Pharmaceuticals reported a drug loss to the Board by submitting a Report of Theft or Loss of Controlled Substances and a narcotic variance report.

108. On or about November 5, 2015, a Board investigator conducted an inspection of Respondent New Age Pharmaceuticals. An audit based on records from June 30, 2013 to June 29, 2015 revealed 16,823 tablets were unaccounted for, including 11,711 tablets of hydrocodone with acetaminophen 10 mg / 325 mg, 119 tablets of hydrocodone with ibuprofen 7.5 mg / 200 mg, 465 tablets of acetaminophen with codeine 300 mg / 30 mg, 4,404 tablets of carisoprodol 350 mg, and 124 tablets of zolpidem 10 mg.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Operational Standards and Security)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

109. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a Board regulation, to wit, California Code of Regulations, title 16, section 1714, subdivision (b), which requires licensed pharmacies to maintain their facilities, space fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed.

110. Respondent New Age Pharmaceuticals and Respondent Youssefyeh violated California Code of Regulations, title 16, section 1714, subdivision (b), by failing to maintain the pharmacy in such a manner as to ensure that drugs were safely and properly secured.

111. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that drugs were safely and properly secured. Complainant realleges paragraphs 43 through 53 and 107 through 111.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Current Inventory)

(As to Respondents New Age Pharmaceuticals and Youssefyeh)

112. Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a provision of the Pharmacy Law, to wit, Code section 4081, subdivision (a), which requires that all records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices be kept current and available for inspection during business hours.

113. Further, Respondent New Age Pharmaceuticals and Respondent Youssefyeh are subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct in that they violated a Board regulation, to wit, California Code of Regulations, title 16, section 1718, which requires complete accountability for all dangerous drugs handled by every licensee, and which requires that controlled substances inventories be made available for inspection upon request for at least three years after the date of the inventory.

114. Respondent New Age Pharmaceuticals and Respondent Youssefyeh failed to maintain a current inventory, in that an audit based on records from June 30, 2013 to June 29, 2015 revealed 16,823 tablets were unaccounted for, including 11,711 tablets of hydrocodone with acetaminophen 10 mg / 325 mg, 119 tablets of hydrocodone with ibuprofen 7.5 mg / 200 mg, 465 tablets of acetaminophen with codeine 300 mg / 30 mg, 4,404 tablets of carisoprodol 350 mg, and 124 tablets of zolpidem 10 mg.

115. Respondent Youssefyeh was the Pharmacist-in-Charge at the time of the conduct in question and had a duty, under Code sections 4036.5 and 4113, subdivision (c), to ensure that the pharmacy and its staff maintained a current inventory of all dangerous drugs and dangerous devices. Complainant realleges paragraphs 43 through 53 and 107 through 115.

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DISCIPLINARY CONSIDERATIONS

116. To determine the degree of discipline, if any, to be imposed on Respondent New Age Pharmaceuticals, Complainant alleges that on or about September 9, 2009, in a prior action, the Board issued Citation Number CI 2008 38626 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of California Code of Regulations, title 16, section 1716.2, subdivision (a)(3), in that Respondent New Age Pharmaceuticals assigned expiration dates beyond the expiration date of the ingredients used to compound preparations in 32 compounded and dispensed products. That Citation is now final and is incorporated by reference as if fully set forth.

117. To determine the degree of discipline, if any, to be imposed on Respondent Youssefyeh, Complainant alleges that on or about September 9, 2009, in a prior action, the Board issued Citation Number CI 2009 41183 and ordered Respondent to pay a total of $1,500 in fines. The fines were imposed for violation of California Code of Regulations, title 16, section 1716.2, subdivision (a)(3), in that Respondent New Age Pharmaceuticals, while Respondent Youssefyeh was pharmacist-in-charge, assigned expiration dates beyond the expiration date of the ingredients used to compound preparations in 32 compounded and dispensed products. That Citation is now final and is incorporated by reference as if fully set forth.

118. To determine the degree of discipline, if any, to be imposed on Respondent New Age Pharmaceuticals, Complainant alleges that on or about January 10, 2013, in a prior action, the Board issued Citation Number CI 2011 49801 and ordered Respondent New Age Pharmaceuticals to pay a total of $1,500 in fines. The fines were imposed for violation of Code section 4342, subdivision (a), in that Respondent New Age Pharmaceuticals was found with several prepackaged prescription drugs that were not individually labeled with the drug name, strength, manufacturer, lot number, or expiration date; Code section 4104, subdivision (b), in that Respondent New Age Pharmaceuticals did not have written policies and procedures regarding reporting licensee drug theft or impairment to the Board; and Code section 4105, subdivision (a), in that Respondent New Age Pharmaceuticals was found storing its prescription drug records at Public Storage without a waiver from the Board. That Citation is now final and is incorporated by

reference as if fully set forth.

119. To determine the degree of discipline, if any, to be imposed on Respondent Youssefyeh, Complainant alleges that on or about January 10, 2013, in a prior action, the Board issued Citation Number CI 2012 55282 and ordered Respondent Youssefyeh to pay a total of $1,500 in fines. The fines were imposed for violation of Code section 4342, subdivision (a), in that Respondent New Age Pharmaceuticals, while Respondent Youssefyeh was pharmacist-in-charge, was found with several prepackaged prescription drugs that were not individually labeled with the drug name, strength, manufacturer, lot number, or expiration date; Code section 4104, subdivision (b), in that New Age Pharmaceuticals, while Respondent Youssefyeh was pharmacist-in-charge, did not have written policies and procedures regarding reporting licensee drug theft or impairment to the Board; and Code section 4105, subdivision (a), in that Respondent New Age Pharmaceuticals, while Respondent Youssefyeh was pharmacist-in-charge, was found storing its prescription drug records at Public Storage without a waiver from the Board. That Citation is now final and is incorporated by reference as if fully set forth.

OTHER MATTERS

120. If Pharmacist License No. RPH 55694, issued to Respondent Youssefyeh, is disciplined, then conditions will exist in relation to an officer, director or other person with management or control of Respondent New Age Pharmaceuticals that would constitute grounds for disciplinary action against a licensee within the meaning of Code section 4302, and, as a consequence, the Board may revoke Respondent New Age Pharmaceuticals's pharmacy permit. Respondent Youssefyeh has been the Chief Executive Officer of Respondent New Age Pharmaceuticals since May 9, 2007. She has been the Treasurer and Chief Financial Officer since May 27, 2009. In addition, Respondent Youssefyeh has been the Pharmacist-in-Charge since May 9, 2007.

121. Conditions exist in relation to Shahla Keyvanfar Melamed, an officer, director or other person with management or control of Respondent New Age Pharmaceuticals, that constitute grounds for disciplinary action against a licensee within the meaning of Code section 4302. As a consequence, the Board may revoke Respondent New Age Pharmaceuticals's

pharmacy permit. Shahla Keyvanfar Melamed has been the Secretary of Respondent New Age Pharmaceuticals since May 9, 2007. By the Board's decision and order in case number 5455, effective November 6, 2015, Shahla Keyvanfar Melamed is prohibited from serving as a manager, administrator, owner of ten percent or more of the permit holder's corporate stock, member, officer, director, associate, or partner of a licensee until such time as her license is reinstated or she is issued a new license by the Board. The Board has not reinstated Shahla Keyvanfar Melamed's license or issued her a new license.

122. If Pharmacist License No. RPH 55694, issued to Respondent Youssefyeh, is revoked or suspended or otherwise disciplined, then, pursuant to Code section 4307, Respondent Youssefyeh shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee until, if the license is revoked, the license is reinstated or, if the license is placed on probation, for a period not to exceed five years.

123. If Original Permit No. PHY 48626, issued to Respondent New Age Pharmaceuticals, is revoked or suspended or otherwise disciplined for conduct of which Respondent Youssefyeh had knowledge of or knowingly participated in while she acted as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control and for which the permit is denied, revoked, suspended or placed on probation, then, pursuant to Code section 4307, Respondent Youssefyeh shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee until, if the pharmacy permit is revoked, the license is reinstated or, if the pharmacy permit is placed on probation, for a period not to exceed five years.

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PRAYER

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

1. Revoking or suspending Original Permit Number PHY 48626, issued to New Age Pharmaceuticals, Inc.;

2. Revoking Original Permit Number PHY 48626, issued to New Age Pharmaceuticals, Inc., if Pharmacist License Number RPH 55694, issued to Catherine Afsoon Youssefyeh is disciplined, pursuant to Code section 4302;

3. Revoking Original Permit Number PHY 48626, issued to New Age Pharmaceuticals, Inc., if Shahla Keyvanfar Melamed is found to be a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of Respondent New Age Pharmaceuticals, pursuant to Code section 4302;

4. Revoking or suspending Pharmacist License Number RPH 55694, issued to Catherine Afsoon Youssefyeh, Pharmacist-in-Charge;

5. Prohibiting Catherine Afsoon Youssefyeh from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee during the period in which discipline is imposed on Original Permit Number PHY 48626, issued to New Age Pharmaceuticals, Inc., for conduct of which Catherine Afsoon Youssefyeh had knowledge or knowingly participated in, pursuant to Code section 4307;

6. Prohibiting Catherine Afsoon Youssefyeh from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee during the period in which discipline is imposed on Pharmacist License No. RPH 55694, issued to Catherine Afsoon Youssefyeh, pursuant to Code section 4307;

7. Revoking or suspending Pharmacist License Number RPH 48887, issued to Timothy Lopez;

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8. Ordering Respondents New Age Pharmaceuticals, Inc., Catherine Afsoon Youssefyeh, and Timothy Lopez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 2/23/18

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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

In the Matter of the First Amended Accusation Against: **NEW AGE PHARMACEUTICALS, INC.** **1147 S. Beverly Dr. #B** **Los Angeles, CA 90035** **Original Permit No. PHY 48626** **and** **CATHERINE AFSOON YOUSSEFYEH** **PHARMACIST-IN-CHARGE** **9663 Santa Monica Blvd. STE 835** **Beverly Hills, CA 90210** **Pharmacist License No. RPH 55694** **and** **TIMOTHY LOPEZ** **907 N. Atlantic Blvd.** **Alhambra, CA 91801** **Pharmacist License No. RPH 48887** Respondents.	Case No. 5252 **FIRST AMENDED ACCUSATION**

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Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about May 9, 2007, the Board of Pharmacy issued Original Permit Number PHY 48626 to New Age Pharmaceuticals, Inc. (Respondent New Age Pharmaceuticals, Inc.). The Original Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2016, unless renewed.

3. On or about July 13, 2004, the Board of Pharmacy issued Pharmacist License Number RPH 55694 to Catherine Afsoon Youssefyeh, Pharmacist-in-Charge (Respondent Youssefyeh). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2016, unless renewed.

4. On or about August 14, 1996, the Board of Pharmacy issued Pharmacist License Number RPH 48887 to Timothy Lopez (Respondent Lopez). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2016, unless renewed.

JURISDICTION

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

6. Section 4300.1 states:

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

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7. Section 4342 states, in pertinent part:

"(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code)."

STATUTORY PROVISIONS

8. Section 4022 of the Code defines the term "dangerous drug" as "any drug . . . unsafe for self-use in humans or animals, and includes the following:

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

. . . .

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

9. Section 4040, subdivision (a) of the Code states:

"(a) 'Prescription' means an oral, written, or electronic transmission order that is both of the following:

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

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

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

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

"(E) A legible, clear notice of the condition or purpose for which the drug is being prescribed, if requested by the patient or patients.

"(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either Section 4052.1 or 4052.2.

"(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this state, or pursuant to either Section 4052.1 or 4052.2 by a pharmacist licensed in this state."

10. Section 4059 of the Code states:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

11. Section 4059.5 of the Code states:

"(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to a person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous devices is authorized by law to receive the dangerous drugs or dangerous devices."

12. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

". . . .

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

13. Section 4301 of the Code states:

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

" . . . .

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

" . . . .

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

14. Section 4342 of the Code states:

"(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code)."

HAWAII STATUTORY PROVISIONS

15. Chapter 461-15 of the Hawaii Pharmacy Law states, in pertinent part:

"(a) It shall be unlawful:

". . .

"(7) For any out of state pharmacy or entity engaging in the practice of pharmacy, in any manner to distribute, ship, mail, or deliver prescription drugs or devices into the State without first obtaining a permit from the board; provided that the applicant shall:

"(A) Provide the location, names, and titles of all principal corporate officers;

"(B) Attest that the applicant or any personnel of the applicant has not been found in violation of any state or federal drug laws, including the illegal use of drugs or improper distribution of drugs;

"(C) Submit verification of a valid unexpired license, permit, or registration in good standing to conduct the pharmacy in compliance with the laws of the home state and agree to maintain in good standing the license, permit, or registration; and

"(D) Have in its employ a registered pharmacist whose registration is current and in good standing."

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16. Section 329-32 of the Hawaii Uniform Controlled substance Act states, in pertinent part:

"(a) Every person who:

"(1) Manufactures, distributes, prescribes, or dispenses any controlled substance within this State;

"(2) Proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State; or

"(3) Dispenses or proposes to dispense any controlled substance for use in this State by shipping, mailing, or otherwise delivering the controlled substance from a location outside this State;

"shall obtain a registration issued by the department of public safety in accordance with the department's rules. A licensed or registered health care professional who acts as the authorized agent of a practitioner and who administers controlled substances at the direction of the practitioner shall not be required to obtain a registration."

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1716, states, in pertinent part

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

18. California Code of Regulations, title 16, section 1717.4, states, in pertinent part:

"(a) Except as otherwise prohibited by law, prescriptions may be transmitted by electronic means from the prescriber to the pharmacy.

"(b) An electronically transmitted prescription which meets the requirements of this regulation shall be deemed to be a prescription within the meaning of Business and Professions Code section 4040.

"(c) An electronically transmitted prescription order shall include the name and address of the prescriber, a telephone number for oral confirmation, date of transmission and the identity of the recipient, as well as any other information required by federal or state law or regulations. The

prescriber's address, license classification and federal registry number may be omitted if they are on file and readily retrievable in the receiving pharmacy.

". . . .

"(f) An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice. This requirement shall not apply to orders for medications to be administered in an acute care hospital.

". . . .

"(h) Any person who transmits, maintains or receives any prescription or prescription refill, orally, in writing or electronically, shall ensure the security, integrity, authenticity, and confidentiality of the prescription and any information contained therein."

19. California Code of Regulations, title 16, section 1735.1, states, in pertinent part

"(c) "Potency" means active ingredient strength within +/- 10% of the labeled amount."

20. California Code of Regulations, title 16, section 1735.6, states, in pertinent part

"(c) Any equipment used to compound drug products for which calibration or adjustment is appropriate shall be calibrated prior to use to ensure accuracy. Documentation of each such calibration shall be recorded in writing and these records of calibration shall be maintained and retained in the pharmacy."

DANGEROUS DRUGS AND CONTROLLED SUBSTANCES

21. Ketoprofen (NAP) cream L, is a topical analgesic and a dangerous drug within the meaning of section 4022.

22. Ketamine 10%/ gabapentin 6%/ nifedipine 7%/ pentoxifylline 5%/ lidocaine 3%/ clonidine 0.2% (KGNPLC) is a compounded preparation which is a dangerous drug within the meaning of section 4022 and a Schedule III controlled substance pursuant to California Health and Safety Code section 11056, subdivision (g), and Hawaii Uniform Controlled Substances Act, section 329-18, subdivision (c)(6).

23. Ketamine 10% cream is a dangerous drug within the meaning of section 4022 and a Schedule III controlled substance pursuant to California Health and Safety Code section 11056, subdivision (g).

24. Ketamine 10%/ baclofen 2%/ cyclobenzaprine 2%/ flurbiprofen 10%/ gabapentin 6%/ lidocaine 5% (KBCFGL) is a compounded preparation which is a dangerous drug within the meaning of section 4022 and a Schedule III controlled substance pursuant to California Health and Safety Code section 11056, subdivision (g).

25. Flurbiprofen 10%/ baclofen 2%/ cyclobenzaprine 2%/ gabapentin 6%/ lidocaine 2% (FBCGL) is a compounded preparation which is a dangerous drug within the meaning of section 4022.

26. Flurbiprofen 20%/ lidocaine 5%/ amitriptyline 5% is a compounded preparation which is a dangerous drug within the meaning of section 4022.

REASONABLE COSTS

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

COMPLAINT INVESTIGATION #1

28. From on or about May 9, 2007 to the present, Catherine Afsoon Youssefyeh has been the Pharmacist-in-Charge (PIC) of Respondent New Age Pharmaceuticals, Inc.

29. On or about December 18, 2012, the Board received a written complaint from Milind Panse, MD indicating that he had prescribed Terocin local transdermal lotion to two patients for pain relief and when he saw the patients for follow up visits, they stated they received many more medications than just the Terocin in the mail.

30. On or about July 30, 2012, Respondent New Age Pharmaceuticals, Inc. dispensed and billed Terocin lotion 240gm, Somnicin capsules, Genicin capsules, Laxacin tablets, and Ketoprofen (NAP) cream to Patient A.M. by purported order of Dr. Milind Panse when in fact, Dr. Panse had only prescribed Terocin lotion 120gm to Patient A.M. These prescriptions were filled by Respondent Lopez and though they bore Dr. Panse's name, they did not bear his signature, did not match the prescription sent by Dr. Panse, and were of a form not used by Dr. Panse's office.

31. On or about July 30, 2012, Respondent New Age Pharmaceuticals, Inc. dispensed and billed Terocin lotion 240gm, Somnicin capsules, Genicin capsules, Laxacin tablets, and Ketoprofen (NAP) cream to Patient K.W. by purported order of Dr. Milind Panse when in fact, Dr. Panse had only prescribed Terocin lotion 120gm to Patient K.W. These prescriptions were filled by Respondent Lopez and though they bore Dr. Panse's name, they did not bear his signature, did not match the prescription sent by Dr. Panse, and were of a form not used by Dr. Panse's office.

32. On or about September 5, 2013, a board inspection of Respondent New Age Pharmaceuticals, Inc. revealed that prescriptions were transmitted by electronic means from persons other than the prescriber to Pharmacist Hootan Melamed's email account and then forwarded to New Age Pharmaceuticals, Inc. Specifically, this occurred on July 5, 2012 for seven prescriptions from Dr. Peter Ly, on June 22, 2012 for one prescription from Dr. Richard Biama, and on April 27, 2012 for one prescription from Dr. Nestor Gonzalez.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

(As to all Respondents)

33. Respondent New Age Pharmaceuticals, Inc., Respondent Youssefyeh, and Respondent Lopez, are subject to disciplinary action under section 4301, subdivision (f), for committing acts of moral turpitude, dishonesty, fraud, deceit or corruption. Specifically, on or about July 30, 2012, New Age Pharmaceuticals, Inc. dispensed and billed medications from prescriptions they should have recognized as fraudulent for Patients A.M. and K.W. Complainant refers to and incorporates all the allegations contained in paragraphs 28 through 32, above, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without a Prescription)

(As to All Respondents)

34. Respondent New Age Pharmaceuticals, Inc., Respondent Youssefyeh, and Respondent Lopez, are subject to disciplinary action under section 4059, subdivision (a), for

furnishing the dangerous drug Ketoprofen (NAP) cream to patients A.M. and K.W. on or about July 30, 2012 without a valid prescription. Complainant refers to and incorporates all the allegations contained in paragraphs 28 through 32, above, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Electronic Transmission of Prescriptions)

(As to Respondents New Age Pharmaceuticals, Inc. and Catherine Afsoon Youssefyeh)

35. Respondent New Age Pharmaceuticals, Inc. and Respondent Youssefyeh are subject to disciplinary action under California Code of Regulations, title 16, section 1717.4, subdivisions (a) and (f), in conjunction with Code section 4301, subdivision (o), for receiving and filling prescriptions which were transmitted to the pharmacy by electronic means from a person other than the prescriber. Complainant refers to and incorporates all the allegations contained in paragraphs 28 and 32, above, as though set forth fully.

COMPLAINT INVESTIGATION #2

36. On or about August 5, 2014, the Board received a written complaint from a pharmacist in Hawaii alleging Respondent New Age Pharmaceuticals, Inc. dispensed prescriptions to Hawaii consumers without a pharmacy license from the Hawaii Board. In response to this complaint, Board inspectors conducted an inspection of New Age Pharmaceuticals, Inc. on or about January 23, 2015.

37. During the inspection of New Age Pharmaceuticals, Inc., Board inspectors requested a detailed drug dispensing report for prescriptions dispensed to patients located in Hawaii from January 20, 2012 to January 23, 2015. On or about January 30, 2015, the Board received the requested prescription dispensing report for Hawaii consumers from Respondent Youssefyeh. The report identified 26 different prescriptions dispensed to Hawaii consumers and is summarized as follows:

Date	RX#	Drug	Pt	Pt State
5/31/13	160461	FBCGL 20/2/2/6/2	AF	HI
6/14/13	164561	FBCGL 20/2/2/6/2	TS	HI
6/20/13	165507	FBCGL 20/2/2/6/2	ES	HI
6/26/13	166613	FBCGL 20/2/2/6/2	VO	HI
6/27/13	166367	FBCGL 20/2/2/6/2	PG	HI

7/12/13	170368	FBCGL 20/2/2/6/2	CF	HI
7/16/13	171305	FBCGL 20/2/2/6/2	JP	HI
7/17/13	172263	FBCGL 20/2/2/6/2	KT	HI
7/25/13	174867	KGNPLC 10/6/7/5/3/0.2	BS	HI
8/1/13	160461	FBCGL 20/2/2/6/2	AF	HI
8/1/13	175971	FBCGL 20/2/2/6/2	EU	HI
8/12/13	179010	FBCGL 20/2/2/6/2	WP	HI
8/15/13	180143	Ketamine 10%	JP	HI
8/30/13	174867	KGNPLC 10/6/7/5/3/0.2	BS	HI
9/11/13	166367	FBCGL 20/2/2/6/2	PG	HI
9/16/13	180143	Ketamine 10%	JP	HI
10/4/13	174867	KGNPLC 10/6/7/5/3/0.2	BS	HI
10/7/13	180143	Ketamine 10%	JP	HI
11/19/13	174867	KGNPLC 10/6/7/5/3/0.2	BS	HI
1/23/14	220190	Ketamine 10%	JP	HI
2/6/14	222735	KGNPLC 10/6/7/5/3/0.2	BS	HI
3/10/14	175971	FBCGL 20/2/2/6/2	EU	HI
3/20/14	229064	FBCGL 20/2/2/6/2	PH	HI
4/2/14	230726	KBCFGL 10/2/2/10/6/5	YL	HI
5/2/14	233492	KBCFGL 10/2/2/10/6/5	HH	HI
5/6/14	233712	FBCGL 20/2/2/6/2	DY	HI

38. During the inspection of New Age Pharmaceuticals, Inc., Board inspectors reviewed potency test results conducted by Analytical Research Laboratories (ARL) and found that a sample of flurbiprofen 20%/lidocaine 5%/amitriptyline 5% was sent for testing on or about December 9, 2014 to ARL and the following results were received on December 19, 2014, which revealed that amitriptyline was not within the acceptable 10% excursions:

Compound	Date Prepared	Lot#	Test Results	Test Date
Flurbiprofen20%/ Lidocaine 5%/ Amitriptyline 5%	12/3/14	12032014 @1	**Amitriptyline 84.1% of expected**	12/15/14
			Amitriptyline Average 85.3% of expected	12/9/14
			Amitriptyline Rerun 86.6% of expected	12/9/14
			Flurbiprofen 88% of expected	12/15/14
			Flurbiprofen Average 89.6%of expected	12/15/14
			Flurbiprofen Rerun 91.3% of expected	12/15/14
			Lidocaine 91.5% of expected	12/16/14

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39. New Age Pharmaceuticals dispensed at least 155 prescriptions of flurbiprofen 20%/lidocaine 5%/ amitriptyline 5% lot#12032014@1 and no action was taken after discovering the preparation was found not to be its labeled strength and potency. The following table details these prescriptions:

Date	RX#	Pt
12/15/14	257505	FH
12/15/14	257509	CJ
12/15/14	257524	JR
12/15/14	258514	IE
12/16/14	257529	BR
12/16/14	257536	JR
12/16/14	257548	SK
12/16/14	257566	JM
12/16/14	257578	JS
12/16/14	257590	RG
12/16/14	257598	MH
12/16/14	257603	DB
12/16/14	257608	JG
12/16/14	257613	VV
12/16/14	257618	MG
12/16/14	257623	JC
12/17/14	257628	RC
12/17/14	257633	AG
12/17/14	257638	GL
12/17/14	257643	EC
12/17/14	257647	GR
12/17/14	257653	CA
12/17/14	257663	MR
12/17/14	257690	RP
12/17/14	257693	M
12/17/14	257698	MC
12/17/14	257706	AM
12/17/14	257709	AR
12/17/14	257714	BF
12/17/14	257717	OJ
12/17/14	257721	YB
12/17/14	258058	TT
12/18/14	257727	FA
12/18/14	257730	EE
12/18/14	257737	CS
12/18/14	257742	MT
12/18/14	257747	MD
12/18/14	257752	SR
12/18/14	257755	JC
12/18/14	257762	RR
12/18/14	257768	JR
12/18/14	257771	JZ
12/18/14	257780	GG
12/18/14	257783	YH
12/18/14	257848	MJ
12/19/14	257853	GM
12/19/14	257857	JG
12/19/14	257863	PD
12/19/14	257869	FM
12/19/14	257874	GM
12/19/14	257879	JS
12/19/14	257884	RA
12/19/14	257890	PV
12/19/14	257894	BB
12/19/14	257898	RV
12/19/14	257904	MO
12/19/14	257916	LE
12/19/14	257921	NW
12/19/14	257924	DA
12/19/14	257931	SW
12/19/14	257936	FN
12/22/14	257939	CM
12/22/14	257948	MS
12/22/14	257953	DH
12/22/14	257958	FC
12/22/14	257964	MP
12/22/14	257970	FD
12/22/14	257976	SM
12/22/14	257983	JA
12/22/14	257989	JL
12/22/14	257995	ES
12/22/14	258002	RS
12/22/14	258006	MC
12/22/14	258007	AL
12/22/14	258018	JR
12/22/14	258024	CG
12/22/14	258031	NC
12/22/14	258034	OD
12/22/14	258041	ST
12/22/14	258048	JG
12/22/14	258052	NC
12/22/14	258057	SD
12/22/14	258068	JG
12/22/14	258085	RK
12/22/14	258096	ML
12/22/14	258106	DL
12/22/14	258110	JA
12/22/14	258115	TB
12/22/14	258172	JM
12/22/14	258176	MH
12/22/14	258177	AA
12/22/14	258185	MO
12/22/14	258192	CB
12/22/14	258195	DG
12/22/14	258203	FF
12/22/14	258207	JT
12/22/14	258213	ML
12/22/14	258216	VR
12/22/14	258233	FC
12/22/14	258234	ED
12/23/14	258244	GU
12/23/14	258251	TW
12/23/14	258256	JB
12/23/14	258261	RP
12/23/14	258266	SA
12/23/14	258271	DD
12/23/14	258276	AW
12/23/14	258285	CS
12/23/14	258291	AC
12/23/14	258300	CC
12/23/14	258300	JL
12/23/14	258307	AB
12/23/14	258310	MP
12/23/14	258316	CG
12/23/14	258321	ML
12/23/14	258325	ER
12/23/14	258330	DG
12/23/14	258331	MQ
12/23/14	258338	MA
12/23/14	258339	MN
12/23/14	258345	JS
12/23/14	258353	VR
12/23/14	258356	RG
12/23/14	258361	RB
12/23/14	258369	RR
12/23/14	258374	NV
12/23/14	258377	ZJ
12/23/14	258382	CP
12/23/14	258389	AR
12/23/14	258395	CF
12/23/14	258400	CM
12/23/14	258413	DM

12/18/14	257788	JT	12/22/14	258120	GR	12/23/14	258427	AG
12/18/14	257792	RT	12/22/14	258125	EM	12/23/14	258430	JA
12/18/14	257796	MM	12/22/14	258130	MC	12/23/14	258456	CA
12/18/14	257813	JM	12/22/14	258135	AW	12/23/14	258461	RR
12/18/14	257818	JC	12/22/14	258141	BM	12/23/14	258467	EV
12/18/14	257823	MG	12/22/14	258147	MK	12/23/14	258503	FV
12/18/14	257827	PD	12/22/14	258147	MK	1/9/15	262279	KS
12/18/14	257834	MS	12/22/14	258164	GM			

40. During the inspection of the compounding area of New Age Pharmaceuticals, Inc., Board inspectors asked to review the daily scale calibrations. Pharmacy Technician TCH Canchola stated there was no record of daily scale calibrations because the scales were not calibrated daily.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Laws of All Involved Jurisdictions)

(As to Respondents New Age Pharmaceuticals, Inc. and Catherine Afsoon Youssefyeh)

41. Respondent New Age Pharmaceuticals, Inc. and Respondent Youssefyeh, are subject to disciplinary action under section 4059.5, subdivision (e), for failing to comply with laws of all involved jurisdictions when, between May 31, 2013 and May 6, 2014, New Age Pharmaceuticals, Inc. dispensed and shipped at least 26 prescriptions for dangerous drugs, some of which were also controlled substances, to Hawaii consumers without first obtaining a non-resident pharmacy permit from the Hawaii State Board of Pharmacy as required by Hawaii Pharmacy Law Chapter 461-15, subdivision (a)(7), or a controlled substance registration from the Hawaii State Narcotic Division as required by the Hawaii Uniform Controlled Substance Act 329-32, subdivision (a). Complainant refers to and incorporates all the allegations contained in paragraphs 36 through 37, above, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

(As to Respondents New Age Pharmaceuticals, Inc. and Catherine Afsoon Youssefyeh)

42. Respondent New Age Pharmaceuticals, Inc. and Respondent Youssefyeh, are subject to disciplinary action under section 4301, subdivision (j), on the grounds of unprofessional conduct, for violating California and Hawaii statutes regulating controlled substances and

dangerous drugs in that, between May 31, 2013 and May 6, 2014, New Age Pharmaceuticals, Inc. dispensed and shipped at least 26 prescriptions for dangerous drugs, some of which were also controlled substances, to Hawaii consumers without first obtaining a non-resident pharmacy permit from the Hawaii State Board of Pharmacy as required by Hawaii Pharmacy Law Chapter 461-15, subdivision (a)(7), or a controlled substance registration from the Hawaii State Narcotic Division as required by the Hawaii Uniform Controlled Substance Act 329-32, subdivision (a). These failures also constitute a violation of Business and Professions Code section 4059.5, subdivision (e), for failing to comply with laws of all involved jurisdictions as charged above in the Fourth Cause for Discipline. Complainant refers to and incorporates all the allegations contained in paragraphs 36 through 37 and paragraph 41, above, as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(Variation from Prescription)

(As to Respondents New Age Pharmaceuticals, Inc. and Catherine Afsoon Youssefyeh)

43. Respondent New Age Pharmaceuticals, Inc. and Respondent Youssefyeh, are subject to disciplinary action under California Code of Regulations, title 16, section 1716, in conjunction with Code sections 4301, subdivision (o), and 4342 for deviating from the requirements of a prescription when they dispensed 155 compounded prescriptions of flurbiprofen 20%/lidocaine 5%/amitriptyline 5% which were tested and found not to be their labeled strength and potency and therefore not the correct prescribed dosage. Complainant refers to and incorporates all the allegations contained in paragraphs 38 through 39, above, as though set forth fully.

SEVENTH CAUSE FOR DISCIPLINE

(Compounding Facilities and Equipment)

(As to Respondents New Age Pharmaceuticals, Inc. and Catherine Afsoon Youssefyeh)

44. Respondent New Age Pharmaceuticals, Inc. and Respondent Youssefyeh are subject to disciplinary action under California Code of Regulations, title 16, section 1735.6, subdivision (c), in conjunction with Code section 4301, subdivision (o), for failing to calibrate, and document the calibration of, any equipment used to compound drug products for which calibration or adjustment is appropriate. Specifically, Respondents failed to calibrate their balance scale prior

to each use and therefore failed to document daily scale calibrations. Complainant refers to and incorporates all the allegations contained in paragraph 40, above, as though set forth fully.

DISCIPLINARY CONSIDERATIONS

45. To determine the degree of discipline, if any, to be imposed on Respondent New Age Pharmaceuticals, Inc., Complainant alleges that on or about September 9, 2009, in a prior action, the Board issued Citation Number C1 2008 38626 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of California Code of Regulations, title 16, section 1716.2, subdivision (a)(3), in that Respondent New Age Pharmaceuticals, Inc. assigned expiration dates beyond the expiration date of the ingredients used to compound preparations in 32 compounded and dispensed products. That Citation is now final and is incorporated by reference as if fully set forth.

46. To determine the degree of discipline, if any, to be imposed on Respondent Youssefyeh, Complainant alleges that on or about September 9, 2009, in a prior action, the Board issued Citation Number C1 2009 41183 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of California Code of Regulations, title 16, section 1716.2, subdivision (a)(3), in that New Age Pharmaceuticals, Inc., while Respondent Youssefyeh was pharmacist-in-charge, assigned expiration dates beyond the expiration date of the ingredients used to compound preparations in 32 compounded and dispensed products. That Citation is now final and is incorporated by reference as if fully set forth.

47. To determine the degree of discipline, if any, to be imposed on Respondent New Age Pharmaceuticals, Inc., Complainant alleges that on or about January 10, 2013, in a prior action, the Board issued Citation Number C1 2011 49801 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of Code section 4342, subdivision (a), in that Respondent New Age Pharmaceuticals, Inc. was found with several prepackaged prescription drugs that were not individually labeled with the drug name, strength, manufacturer, lot number, or expiration date; Code section 4104, subdivision (b), in that Respondent New Age Pharmaceuticals, Inc. did not have written policies and procedures regarding reporting licensee drug theft or impairment to the Board; and Code section 4105, subdivision (a), in that Respondent

New Age Pharmaceuticals, Inc. was found storing its prescription drug records at Public Storage without a waiver from the Board. That Citation is now final and is incorporated by reference as if fully set forth.

48. To determine the degree of discipline, if any, to be imposed on Respondent Youssefyeh, Complainant alleges that on or about January 10, 2013, in a prior action, the Board issued Citation Number C1 2012 55282 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of Code section 4342, subdivision (a), in that New Age Pharmaceuticals, Inc., while Respondent Youssefyeh was pharmacist-in-charge, was found with several prepackaged prescription drugs that were not individually labeled with the drug name, strength, manufacturer, lot number, or expiration date; Code section 4104, subdivision (b), in that New Age Pharmaceuticals, Inc., while Respondent Youssefyeh was pharmacist-in-charge, did not have written policies and procedures regarding reporting licensee drug theft or impairment to the Board; and Code section 4105, subdivision (a), in that New Age Pharmaceuticals, Inc., while Respondent Youssefyeh was pharmacist-in-charge, was found storing its prescription drug records at Public Storage without a waiver from the Board. That Citation is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Original Permit Number PHY 48626, issued to New Age Pharmaceuticals, Inc.;

2. Revoking or suspending Pharmacist License Number RPH 55694, issued to Catherine Afsoon Youssefyeh, Pharmacist-in-Charge;

3. Revoking or suspending Pharmacist License Number RPH 48887, issued to Timothy Lopez;

4. Ordering Respondents New Age Pharmaceuticals, Inc., Catherine Afsoon Youssefyeh, and Timothy Lopez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 5/12/16

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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

In the Matter of the Accusation Against: **NEW AGE PHARMACEUTICALS, INC.** **1147 S. Beverly Dr. #B** **Los Angeles, CA 90035** **Original Permit No. PHY 48626** **and** **CATHERINE AFSOON YOUSSEFYEH** **PHARMACIST-IN-CHARGE** **9663 Santa Monica Blvd. STE 835** **Beverly Hills, CA 90210** **Pharmacist License No. RPH 55694** **and** **TIMOTHY LOPEZ** **907 N. Atlantic Blvd.** **Alhambra, CA 91801** **Pharmacist License No. RPH 48887** Respondents.	Case No. 5252 **A C C U S A T I O N**

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Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about May 9, 2007, the Board of Pharmacy issued Original Permit Number PHY 48626 to New Age Pharmaceuticals, Inc. (Respondent New Age Pharmaceuticals, Inc.). The Original Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2016, unless renewed.

3. On or about July 13, 2004, the Board of Pharmacy issued Pharmacist License Number RPH 55694 to Catherine Afsoon Youssefyeh, Pharmacist-in-Charge (Respondent Youssefyeh). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2016, unless renewed.

4. On or about August 14, 1996, the Board of Pharmacy issued Pharmacist License Number RPH 48887 to Timothy Lopez (Respondent Lopez). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2016, unless renewed.

JURISDICTION

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

6. Section 4300.1 states:

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

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STATUTORY PROVISIONS

7. Section 4022 of the Code defines the term "dangerous drug" as "any drug . . . unsafe for self-use in humans or animals, and includes the following:

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

. . . .

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

8. Section 4040, subdivision (a) of the Code states:

"(a) 'Prescription' means an oral, written, or electronic transmission order that is both of the following:

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

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

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

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

"(E) A legible, clear notice of the condition or purpose for which the drug is being prescribed, if requested by the patient or patients.

"(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either Section 4052.1 or 4052.2.

"(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or

naturopathic doctor licensed in this state, or pursuant to either Section 4052.1 or 4052.2 by a pharmacist licensed in this state."

9. Section 4059 of the Code states:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

10. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

". . . .

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

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11. Section 4301 of the Code states:

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

" . . . .

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

" . . . .

"(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."

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1717.4, states, in pertinent part:

"(a) Except as otherwise prohibited by law, prescriptions may be transmitted by electronic means from the prescriber to the pharmacy.

"(b) An electronically transmitted prescription which meets the requirements of this regulation shall be deemed to be a prescription within the meaning of Business and Professions Code section 4040.

"(c) An electronically transmitted prescription order shall include the name and address of the prescriber, a telephone number for oral confirmation, date of transmission and the identity of the recipient, as well as any other information required by federal or state law or regulations. The prescriber's address, license classification and federal registry number may be omitted if they are on file and readily retrievable in the receiving pharmacy.

". . . .

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"(f) An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice. This requirement shall not apply to orders for medications to be administered in an acute care hospital.

". . . .

"(h) Any person who transmits, maintains or receives any prescription or prescription refill, orally, in writing or electronically, shall ensure the security, integrity, authenticity, and confidentiality of the prescription and any information contained therein."

DANGEROUS DRUGS

13. Ketoprofen (NAP) cream L, is a topical analgesic and a dangerous drug within the meaning of section 4022.

REASONABLE COSTS

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

STATEMENT OF FACTS

15. From on or about May 9, 2007 to the present, Catherine Afsoon Youssefyeh has been the Pharmacist-in-Charge (PIC) of Respondent New Age Pharmaceuticals, Inc.

16. On or about December 18, 2012, the Board received a written complaint from Milind Panse, MD indicating that he had prescribed Terocin local transdermal lotion to two patients for pain relief and when he saw the patients for follow up visits, they stated they received many more medications than just the Terocin in the mail.

17. On or about July 30, 2012, Respondent New Age Pharmaceuticals, Inc. dispensed and billed Terocin lotion 240gm, Somnicin capsules, Genicin capsules, Laxacin tablets, and Ketoprofen (NAP) cream to Patient A.M. by purported order of Dr. Milind Panse when in fact, Dr. Panse had only prescribed Terocin lotion 120gm to Patient A.M. These prescriptions were filled by Respondent Lopez and though they bore Dr. Panse's name, they did not bear his

signature, did not match the prescription sent by Dr. Panse, and were of a form not used by Dr. Panse's office.

18. On or about July 30, 2012, Respondent New Age Pharmaceuticals, Inc. dispensed and billed Terocin lotion 240gm, Somnicin capsules, Genicin capsules, Laxacin tablets, and Ketoprofen (NAP) cream to Patient K.W. by purported order of Dr. Milind Panse when in fact, Dr. Panse had only prescribed Terocin lotion 120gm to Patient K.W. These prescriptions were filled by Respondent Lopez and though they bore Dr. Panse's name, they did not bear his signature, did not match the prescription sent by Dr. Panse, and were of a form not used by Dr. Panse's office.

19. On or about September 5, 2013, a board inspection of Respondent New Age Pharmaceuticals, Inc. revealed that prescriptions were transmitted by electronic means from persons other than the prescriber to Pharmacist Hootan Melamed's email account and then forwarded to New Age Pharmaceuticals, Inc. Specifically, this occurred on July 5, 2012 for seven prescriptions from Dr. Peter Ly, on June 22, 2012 for one prescription from Dr. Richard Biama, and on April 27, 2012 for one prescription from Dr. Nestor Gonzalez.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

(As to all Respondents)

20. Respondent New Age Pharmaceuticals, Inc., Respondent Youssefyeh, and Respondent Lopez, are subject to disciplinary action under section 4301, subdivision (f), for committing acts of moral turpitude, dishonesty, fraud, deceit or corruption. Specifically, on or about July 30, 2012, New Age Pharmaceuticals, Inc. dispensed and billed medications from prescriptions they should have recognized as fraudulent for Patients A.M. and K.W. Complainant refers to and incorporates all the allegations contained in paragraphs 15 through 18, above, as though set forth fully.

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SECOND CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without a Prescription)

(As to All Respondents)

21. Respondent New Age Pharmaceuticals, Inc., Respondent Youssefyeh, and Respondent Lopez, are subject to disciplinary action under section 4059, subdivision (a), for furnishing the dangerous drug Ketoprofen (NAP) cream to patients A.M. and K.W. on or about July 30, 2012 without a valid prescription. Complainant refers to and incorporates all the allegations contained in paragraphs 15 through 18, above, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Electronic Transmission of Prescriptions)

(As to Respondents New Age Pharmaceuticals, Inc. and Catherine Afsoon Youssefyeh)

22. Respondent New Age Pharmaceuticals, Inc. and Respondent Youssefyeh are subject to disciplinary action under California Code of Regulations, title 16, section 1717.4, subdivisions (a) and (f), in conjunction with Code section 4301, subdivision (o), for receiving and filling prescriptions which were transmitted to the pharmacy by electronic means from a person other than the prescriber. Complainant refers to and incorporates all the allegations contained in paragraphs 15 and 19, above, as though set forth fully.

DISCIPLINARY CONSIDERATIONS

23. To determine the degree of discipline, if any, to be imposed on Respondent New Age Pharmaceuticals, Inc., Complainant alleges that on or about September 9, 2009, in a prior action, the Board issued Citation Number C1 2008 38626 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of California Code of Regulations, title 16, section 1716.2, subdivision (a)(3), in that Respondent New Age Pharmaceuticals, Inc. assigned expiration dates beyond the expiration date of the ingredients used to compound preparations in 32 compounded and dispensed products. That Citation is now final and is incorporated by reference as if fully set forth.

24. To determine the degree of discipline, if any, to be imposed on Respondent Youssefyeh, Complainant alleges that on or about September 9, 2009, in a prior action, the Board

issued Citation Number C1 2009 41183 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of California Code of Regulations, title 16, section 1716.2, subdivision (a)(3), in that New Age Pharmaceuticals, Inc., while Respondent Youssefyeh was pharmacist-in-charge, assigned expiration dates beyond the expiration date of the ingredients used to compound preparations in 32 compounded and dispensed products. That Citation is now final and is incorporated by reference as if fully set forth.

25. To determine the degree of discipline, if any, to be imposed on Respondent New Age Pharmaceuticals, Inc., Complainant alleges that on or about January 10, 2013, in a prior action, the Board issued Citation Number C1 2011 49801 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of Code section 4342, subdivision (a), in that Respondent New Age Pharmaceuticals, Inc. was found with several prepackaged prescription drugs that were not individually labeled with the drug name, strength, manufacturer, lot number, or expiration date; Code section 4104, subdivision (b), in that Respondent New Age Pharmaceuticals, Inc. did not have written policies and procedures regarding reporting licensee drug theft or impairment to the Board; and Code section 4105, subdivision (a), in that Respondent New Age Pharmaceuticals, Inc. was found storing its prescription drug records at Public Storage without a waiver from the Board. That Citation is now final and is incorporated by reference as if fully set forth.

26. To determine the degree of discipline, if any, to be imposed on Respondent Youssefyeh, Complainant alleges that on or about January 10, 2013, in a prior action, the Board issued Citation Number C1 2012 55282 and ordered Respondent to pay a total of $1,500.00 in fines. The fines were imposed for violation of Code section 4342, subdivision (a), in that New Age Pharmaceuticals, Inc., while Respondent Youssefyeh was pharmacist-in-charge, was found with several prepackaged prescription drugs that were not individually labeled with the drug name, strength, manufacturer, lot number, or expiration date; Code section 4104, subdivision (b), in that New Age Pharmaceuticals, Inc., while Respondent Youssefyeh was pharmacist-in-charge, did not have written policies and procedures regarding reporting licensee drug theft or impairment to the Board; and Code section 4105, subdivision (a), in that New Age Pharmaceuticals, Inc.,

while Respondent Youssefyeh was pharmacist-in-charge, was found storing its prescription drug records at Public Storage without a waiver from the Board. That Citation is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Original Permit Number PHY 48626, issued to New Age Pharmaceuticals, Inc.;

2. Revoking or suspending Pharmacist License Number RPH 55694, issued to Catherine Afsoon Youssefyeh, Pharmacist-in-Charge;

3. Revoking or suspending Pharmacist License Number RPH 48887, issued to Timothy Lopez;

4. Ordering Respondents New Age Pharmaceuticals, Inc., Catherine Afsoon Youssefyeh, and Timothy Lopez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 7/7/15

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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