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8		RE THE	
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10		CALIFORNIA	
11	In the Motter of the Acquestion Against	Case No. 5323	
12	In the Matter of the Accusation Against: MEDICINE SHOPPE 485	ACCUSATION	
13	219 East Olive Avenue	ACCUSATION	
	Fresno, California 93728 JEFF LUM		
14	Pharmacist-in-Charge	,	
15	Pharmacy Permit No. PHY 41280		
16	and		
17	JEFF LUM 219 East Olive Avenue		
18	Fresno, California 93728		
19	Pharmacist License No. RPH 42790		
20	Respondent.		
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22			
23	Complainant alleges:		
24	<u>PARTIES</u>		
25	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
26	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
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		Accusation	_

- 2. On or about August 10, 1989, the Board of Pharmacy issued Pharmacist License Number RPH 42790 to Jeff Lum (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2017, unless renewed.
- 3. On or about December 19, 1995, the Board of Pharmacy issued Pharmacy Permit Number PHY 41280 to Medicine Shoppe 485 (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2016, unless renewed. Jeff Lum is and has been a partner and the Pharmacist in Charge (PIC) since December 19, 1995.

JURISDICTION

- 4. 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 unless otherwise indicated.
- 5. Section 4300 of the Code states in pertinent part that every license issued may be suspended or revoked.
 - 6. Section 4300.1 of the Code 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."

7. Section 4301 of the Code states in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

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

8. Section 4306.5 of the codes states:

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

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

9. Section 4036.5 of the code 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."

- 10. Health and Safety Code section 11153, subdivision (a), states:
- "(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use."

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11. Code of Federal Regulations, title 21, section 1306.05, subdivision (f), states:

"(f) A prescription may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist, including a pharmacist employed by a central fill pharmacy, who fills a prescription not prepared in the form prescribed by DEA regulations."

<u>DRUGS</u>

12. Promethazine with Codeine is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c), paragraph (1), and a dangerous drug as designated by Business and Professions Code section 4022.

COST RECOVERY

13. Section 125.3 of the Code states, 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.

BACKGROUND INFORMATION

- 14. On or about August 21, 2013, Respondents' facility was inspected by an Inspector employed by the Board of Pharmacy. The Inspector found that renewal prescriptions for Promethazine with codeine were sent to prescribers on pre-populated forms that included all necessary information for a prescription including diagnosis and directions for use.
- 15. The Inspector reviewed a random sampling of prescriptions from three (3) prescribers who together were responsible for more than 10% of all Promethazine with codeine prescriptions filled by Respondents, and found that all patients had diagnoses of chronic cough, and 69% paid cash for the prescription. Further, out of 33 patients reviewed from one prescriber, there were 38 prescriptions for Promethazine with codeine, 95% were paid for in cash, 100% contained identical directions for use ("2 teaspoons at bed as needed") 82% had only one prescription on their profile, and 21% had additional prescriptions that were not filled.

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- 16. Every prescriber has a prescription pad on which prescriptions are written. The pad contains sheets that are consecutively numbered, and generally the prescriptions are written in that order. The prescription is then assigned a pharmacy number at the pharmacy when the prescription is filled. The pharmacy number is also issued consecutively, indicating that the prescriptions were generally filled in that order.
- 17. On March 30, 2011, four (4) prescriptions were written by the same prescriber, and filled by Respondent. The prescription pad numbers were consecutive, 2128 through 2131. The pharmacy prescription numbers were also consecutive, 4457214 through 4457217. This indicates the prescriptions were issued at or near the same time and then brought to the pharmacy together.
- 18. On August 29, 2011, six (6) prescriptions were written by the same prescriber and filled by Respondent. The prescription pad numbers were sequential between 471 and 481. The pharmacy prescription numbers were also sequential between 4459469 and 4459474. This indicates the prescriptions were issued at or near the same time and then brought to the pharmacy together.
- 19. On September 13, 2011, nine (9) prescriptions were written by the same prescriber, and filled by Respondent. The prescription pad numbers were sequential between 1373 and 1398. The pharmacy prescription numbers were also sequential between 4459702 and 4459711. This indicates the prescriptions were issued at or near the same time and then brought to the pharmacy together.

FIRST CAUSE FOR DISCIPLINE

(Failure to Exercise Best Professional Judgment)

20. Respondents are subject to disciplinary action for unprofessional conduct pursuant to section 4301, and as defined by section 4306.5, subdivision (b), in that Respondents failed to exercise, or ensure that employees of Respondent Medicine Shoppe 485 exercised, their best professional judgment or corresponding responsibility to ensure that all controlled substances are dispensed for a legitimate medical purpose when Respondents and their employees failed to evaluate the totality of the circumstances (information from the patient, physician, or other

sources) to determine the prescription's legitimate medical purpose. The circumstances are as follows:

21. Between approximately January 1, 2011, and August 22, 2013, Respondents and their employees dispensed 1,487 prescriptions for promethazine with codeine. Respondents and their employees failed to make any reasonable inquiry into the validity of these prescriptions. Specifically, Respondents and their employees failed to question three (3) prescribers' repetitive prescribing habits, the high amount of cash transactions even when insurance was available, and the sequential numbering of prescriptions. Further, Respondents and their employees failed to question a lack of diagnosis or sufficiently descriptive diagnosis, or to ask the patient any questions in regards to alleged diagnoses.

SECOND CAUSE FOR DISCIPLINE

(Clearly Excessive Furnishing of Controlled Substances)

22. Respondents are subject to disciplinary action for unprofessional conduct pursuant to section 4301, subdivision (d), in that Respondents, and their employees, clearly excessively furnished controlled substances in violation of Health and Safety Code section 11153, subdivision (a), by failing to exercise Respondents' corresponding responsibility to ensure that prescriptions for controlled substances were issued for a legitimate medical purpose during the period January 1, 2011 to August 22, 2013. The circumstances are as set forth in paragraphs 20 and 21, above.

THIRD CAUSE FOR DISCIPLINE

(Violation of Statutes Regulating Controlled Substances)

23. Respondents are subject to disciplinary action for unprofessional conduct pursuant to section 4301, subdivision (j), for violating, or allowing their employees to violate, statutes regulating controlled substances as set forth in paragraphs 20 through 22, above.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Statutes Governing Pharmacy)

24. Respondents are subject to disciplinary action for unprofessional conduct pursuant to section 4301, subdivision (o), as set forth in paragraphs 20 through 23, above, and as follows: