KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General
NANCY A. KAISER
Deputy Attorney General
State Bar No. 192083
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-5794
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against: **MARC 1 DRUGS, INC. DBA PAYLESS PHARMACY** **PIC MARC T. HOANG, OWNER/PRESIDENT** 8841 Valley Blvd Rosemead, CA 91770 **Original Permit Number PHY 50705** and **MARC T. HOANG** 8841 Valley Blvd Rosemead, CA 91770 **Pharmacist License Number RPH 50411** Respondents.	Case No. 5470 **ACCUSATION**

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 September 16, 2011, the Board of Pharmacy issued Original Permit Number PHY 50705 to Marc 1 Drugs, Inc. dba Payless Pharmacy (Respondent Payless Pharmacy). The Original Permit will expire on September 1, 2016, unless renewed. Marc T.

Hoang has been the Pharmacist-in-Charge, owner and President of Respondent Payless Pharmacy since September 16, 2011.

3. On or about September 4, 1998, the Board of Pharmacy issued Pharmacist License Number RPH 50411 to Marc T. Hoang (Respondent Hoang). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2018, unless renewed.

JURISDICTION

4. This Accusation is brought before the California State 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 provides, in part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4302 of the Code states:

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

7. Section 4113 of the Code states, in part:

"(b) 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."

8. 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."

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STATUTORY AUTHORITY

9. 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:

. . .

"(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."

10. Section 4022 of the Code 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.

"(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. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices [defined in Section 4022] 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, 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.

"(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge, responsible manager, or designated representative-in-charge, for maintaining the records and inventory described in this section.

"(c) The pharmacist-in-charge, responsible manager, or designated representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge, responsible manager, or designated representative-in-charge had no knowledge, or in which he or she did not knowingly participate."

12. Section 4105 of the Code states, in part:

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

. . .

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

. . .

"(f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made."

13. Section 4013 of the Code states, in part:

"(a) Any facility licensed by the board shall join the board's e-mail notification list within 60 days of obtaining a license or at the time of license renewal.

"(b) Any facility licensed by the board shall update its e-mail address with the board's e-mail notification list within 30 days of a change in the facility's e-mail address.

"(c) An owner of two or more facilities licensed by the board may comply with subdivisions (a) and (b) by subscribing a single e-mail address to the board's e-mail notification list, where the owner maintains an electronic notice system within all of its licensed facilities that, upon receipt of an e-mail notification from the board, immediately transmits electronic notice of the same notification to all of its licensed facilities. If an owner chooses to comply with this section by using such an electronic notice system, the owner shall register the electronic notice system with the board by July 1, 2011, or within 60 days of initial licensure, whichever is later, informing the board of the single e-mail address to be utilized by the owner, describing the electronic notice system, and listing all facilities to which immediate notice will be provided. The owner shall update its e-mail address with the board's e-mail notification list within 30 days of any change in the owner's e-mail address.

"(d) This section shall become operative on July 1, 2010."

14. Section 4169 of the Code states, in part:

"(a) A person or entity shall not do any of the following:

. . .

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years."

15. Section 4307, subdivision (a), of the Code states, in pertinent part:

"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, or partner of any partnership, corporation, 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, or partner 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, or partner 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."

STATE REGULATORY AUTHORITY

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

"'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."

COST RECOVERY

17. 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.

FACTUAL SUMMARY

18. On or about May 31, 2014, the federal Drug Enforcement Administration, Los Angeles, forwarded an email to the Board from an anonymous complainant. The complainant alleged, inter alia, that Respondent Payless Pharmacy billed patients' health insurance companies for Lidoderm[1] and other brand named prescription medications, but did not dispense the medication to the patients. Instead, Respondent Payless Pharmacy waived copayments of prescription medications that a patient needed, in exchange for billing the Lidoderm and other medications that the patient did not need, to the patient's insurance company or allowed patients to trade these prescriptions for over-the-counter products at half and sometimes one third the acquisition price of the brand name medication prescribed. This arrangement would enable the pharmacy to keep the money paid by the patients' insurance for the prescribed medication without

[1] Lidoderm 5% patch requires a prescription. It is used for relieving pain associated with herpes zoster (shingles). Lidoderm patch is a local anesthetic. It works by stopping nerves from transmitting painful impulses to the brain.

deducting the cost of actually purchasing the medication from its drug wholesaler. The Board initiated an investigation.

19. The Board's investigation revealed that Respondent Payless Pharmacy dispensed a significantly larger amount of Lidoderm 5% patches than amounts purchased. Respondent Payless Pharmacy could not account for 6,540 Lidoderm 5% patches (218 boxes) that were purportedly dispensed from November 1, 2012, through January 13, 2015. Respondents' records show that the patches were billed as if they were dispensed; however, Respondents could not produce acquisition records for the purchase of these items.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional conduct - Failure to Provide Records)

20. Respondent Payless Pharmacy and Respondent Hoang are subject to discipline pursuant to Code sections 4301, subdivision (o), on the grounds of unprofessional conduct, in that they violated Code sections 4081, subdivision (a), and 4105, subdivisions (a) and (f), in conjunction with California Code of Regulations, Title 16, Section 1718, by failing to provide all records of sale, acquisition and disposition of dangerous drugs.

21. Respondents could not produce acquisition records for the pharmacy's purchase of 6,540 Lidoderm 5% patches (218 boxes) that were purportedly dispensed by the pharmacy from November 1, 2012, through January 14, 2015. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 18 and 19 above, as though set forth in full herein.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional conduct - Failure to Maintain Records)

22. Respondent Payless Pharmacy and Respondent Hoang are subject to discipline pursuant to Code sections 4301, subdivision (o), on the grounds of unprofessional conduct, in that they violated Code section 4169, subdivision (a)(5), by failing to maintain records of the acquisition and disposition of dangerous drugs or dangerous devices for at least three years.

23. Respondents could not produce acquisition records for the pharmacy's purchase of 6,540 Lidoderm 5% patches (218 boxes) that were purportedly dispensed by the pharmacy from

November 1, 2012, through January 14, 2015. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 18 and 21 above, as though set forth in full herein.

OTHER MATTERS

24. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 50705 issued to Marc 1 Drugs, Inc. dba Payless Pharmacy, Marc 1 Drugs, Inc. shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50705 is placed on probation or until Pharmacy Permit Number PHY 50705 is reinstated if it is revoked.

25. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 50705 issued by the Board to Marc 1 Drugs, Inc. dba Payless Pharmacy while Marc T. Hoang has been an officer and/or owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Marc T. Hoang shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50705 is placed on probation or until Pharmacy Permit Number PHY 50705 is reinstated if it is revoked.

DISCIPLINARY CONSIDERATION

26. On or about April 11, 2014, in a prior action, the Board issued Citation Number 2013 60678 to Respondent Hoang for violating Business and Professions Code section 4110, subdivision (a) (operating a pharmacy without a permit issued by the Board), and fined $1,500. That Citation is now final and is incorporated by reference as if fully set forth.

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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 50705, issued to Marc 1 Drugs, Inc. dba Payless Pharmacy;

2. Revoking or suspending Pharmacist License Number RPH 50411 issued to Marc T. Hoang;

3. Prohibiting Marc 1 Drugs, Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50705 is placed on probation or until Pharmacy Permit Number PHY 50705 is reinstated if Pharmacy Permit Number 50705 issued to Marc 1 Drugs, Inc. dba Payless Pharmacy is revoked;

4. Prohibiting Marc T. Hoang from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50705 is placed on probation or until Pharmacy Permit Number PHY 50705 is reinstated if Pharmacy Permit Number PHY 50705 issued to Marc 1 Drugs, Inc. dba Payless Pharmacy is revoked;

5. Ordering Marc 1 Drugs, Inc. dba Payless Pharmacy and Marc T. Hoang to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 7/30/16

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

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