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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5553

12 **KERN MEDICAL CENTER DBA**  
13 **SAGEBRUSH MEDICAL PLAZA**  
14 **PHARMACY**  
1111 Columbus Avenue  
Bakersfield, CA 93305

**FIRST AMENDED ACCUSATION**

15 **Hospital Pharmacy Permit No. PHE 40876,**

16 **KERN COUNTY HOSPITAL**  
17 **AUTHORITY DBA SAGEBRUSH**  
18 **MEDICAL PLAZA PHARMACY**  
1111 Columbus Avenue  
Bakersfield, CA 93305

19 **Hospital Pharmacy Permit No. PHE 54461**

20 **ANGELA MARIE TORRES**  
11501 Valley Forge Way  
21 Bakersfield, CA 93312

22 **Pharmacist License No. RPH 55644,**

23 **and**

24 **ANIECE LOUISE AMOS**  
555 Fairbanks St.  
25 Corona, CA 92879

26 **Pharmacist License No. RPH 36840**

27 Respondents.

28

1 Complainant alleges:

2 PARTIES

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

6 2. On or about August 18, 1995, the Board of Pharmacy ("Board") issued Original  
7 Permit Number PHE 40876 to Kern Medical Center dba Sagebrush Medical Plaza Pharmacy  
8 ("Respondent KMC dba Sagebrush Medical Plaza Pharmacy"). The Hospital Pharmacy Permit  
9 was in full force and effect at all times relevant to the charges brought herein and was canceled on  
10 July 1, 2016 pursuant to a change of ownership.<sup>1</sup>

11 3. On or about July 1, 2016, the Board issued Original Permit Number PHE 54461 to  
12 Kern County Hospital Authority dba Sagebrush Medical Plaza Pharmacy ("Respondent KCHA  
13 dba Sagebrush Medical Plaza Pharmacy"). The Original Permit Number was in full force and  
14 effect at all times relevant to the charges brought herein and will expire on November 1, 2017,  
15 unless renewed.

16 4. On or about July 12, 2004, the Board issued Pharmacist License Number RPH 55644  
17 to Angela Marie Torres ("Respondent Torres"). Between May 1, 2013 and September 11, 2014,  
18 Respondent Torres was the Pharmacist-in-Charge of Respondent KMC dba Sagebrush Medical  
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21 <sup>1</sup> Pursuant to Kern County Hospital Authority Act (Health & Safety Code, § 101852 et  
22 seq.) the California Legislature authorized the County of Kern ("County") to establish the Kern  
23 County Hospital Authority ("Authority") and to transfer the ownership, control, management, and  
24 operation of Kern Medical Center ("KMC") and certain pharmacies operated by KMC to the  
25 Authority. On October 6, 2015 the Kern County Board of Supervisors enacted Ordinance No. A-  
26 356 as amended, that adds Chapter 2.170 to Title 2 of the Ordinance Code of the County of Kern  
27 ("Ordinance") concerning, and which created, the Authority. The Ordinance was effective on  
28 November 6, 2015. On July 1, 2016, the ownership, control, management, and operation of KMC  
and certain pharmacies (including KMC Campus Pharmacy and Sagebrush Medical Plaza  
Pharmacy) were transferred from the County to the Authority. The Authority is a public entity  
that is a local unit of government separate and apart from the County of Kern and any other public  
entity. As specified in various agreements and related documents approved by legal counsel for  
the County, the County shall guarantee the payment by the Authority of liabilities the Authority  
assumes for obligations incurred by the County during its ownership and operation of the KMC.

1 Plaza Pharmacy. The Pharmacist License was in full force and effect at all times relevant to the  
2 charges brought herein and will expire on December 31, 2017, unless renewed.

3 5. On or about January 25, 1982, the Board issued Pharmacist License Number RPH  
4 36840 to Aniece Louise Amos ("Respondent Amos"). The Pharmacist License was in full force  
5 and effect at all times relevant to the charges brought herein and will expire on December 31,  
6 2017, unless renewed.

7 **JURISDICTION**

8 6. This First Amended Accusation is brought before the Board under the authority of the  
9 following laws. All section references are to the Business and Professions Code unless otherwise  
10 indicated.

11 7. Section 4300.1 of the Code states:

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

17 8. Section 4300 of the Code states, in pertinent part:

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

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

22 "(1) Suspending judgment.

23 "(2) Placing him or her upon probation.

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

25 "(4) Revoking his or her license.

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



1 retail pharmacy.

2 "(b) A licensee may pick up prescriptions at the office or home of the prescriber or  
3 pick up or deliver prescriptions or prescription medications at the office of or a  
4 residence designated by the patient or at the hospital, institution, medical office or  
5 clinic at which the patient receives health care services. In addition, the Board may, in  
6 its sole discretion, waive application of subdivision (a) for good cause shown.

7 "(c) A patient or the patient's agent may deposit a prescription in a secure container  
8 that is at the same address as the licensed pharmacy premises. The pharmacy shall be  
9 responsible for the security and confidentiality of the prescriptions deposited in the  
10 container.

11 "(d) A pharmacy may use an automated delivery device to deliver previously  
12 dispensed prescription medications provided:

13 "(1) Each patient using the device has chosen to use the device and signed a  
14 written consent form demonstrating his or her informed consent to do so.

15 "(2) A pharmacist has determined that each patient using the device meets  
16 inclusion criteria for use of the device established by the pharmacy prior to  
17 delivery of prescription medication to the patient.

18 "(3) The device has a means to identify each patient and only release that  
19 patient's prescription medications.

20 "(4) The pharmacy does not use the device to deliver previously dispensed  
21 prescription medications to any patient if a pharmacist determines that such  
22 patient requires counseling as set forth in section 1707.2(a)(2).

23 "(5) The pharmacy provides an immediate consultation with a pharmacist,  
24 either in-person or via telephone, upon the request of a patient.

25 "(6) The device is located adjacent to the secure pharmacy area.

26 "(7) The device is secure from access and removal by unauthorized  
27 individuals.

28 "(8) The pharmacy is responsible for the prescription medications stored in  
the device.

"(9) Any incident involving the device where a complaint, delivery error, or  
omission has occurred shall be reviewed as part of the pharmacy's quality  
assurance program mandated by Business and Professions Code section  
4125.

"(10) The pharmacy maintains written policies and procedures pertaining to  
the device as described in subdivision (e).

"(e) Any pharmacy making use of an automated delivery device as permitted by  
subdivision (d) shall maintain, and on an annual basis review, written policies and  
procedures providing for:

"(1) Maintaining the security of the automated delivery device and the  
dangerous drugs within the device.

1           "(2) Determining and applying inclusion criteria regarding which  
2           medications are appropriate for placement in the device and for which  
3           patients, including when consultation is needed.

4           "(3) Ensuring that patients are aware that consultation with a pharmacist is  
5           available for any prescription medication, including for those delivered via  
6           the automated delivery device.

7           "(4) Describing the assignment of responsibilities to, and training of,  
8           pharmacy personnel regarding the maintenance and filing procedures for the  
9           automated delivery device.

10           "(5) Orienting participating patients on use of the automated delivery device,  
11           notifying patients when expected prescription medications are not available  
12           in the device, and ensuring that patient use of the device does not interfere  
13           with delivery of prescription medications.

14           "(6) Ensuring the delivery of medications to patients in the event the device  
15           is disabled or malfunctions.

16           "(f) Written policies and procedures shall be maintained at least three years beyond  
17           the last use for an automated delivery device.

18           "(g) For the purposes of this section only, 'previously-dispensed prescription  
19           medications' are those prescription medications that do not trigger a non-discretionary  
20           duty to consult under section 1707.2(b)(1), because they have been previously  
21           dispensed to the patient by the pharmacy in the same dosage form, strength, and with  
22           the same written directions."

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

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

26           "(b) An electronically transmitted prescription which meets the requirements of this  
27           regulation shall be deemed to be a prescription within the meaning of Business and  
28           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 an 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.

"(g) Electronic equipment for transmitting prescriptions (or electronic transmittal technology) shall not be supplied or used so as to violate or circumvent Business and Professions Code section 4000 et seq., Health and Safety Code section 11150 et seq., or any regulations of the board.

"(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."

### 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.

### RELEVANT BACKGROUND FACTS

14. In April 2013, Respondent Amos, who was then the Director of Pharmacy for Kern Medical Center, had multiple communications with a Board Inspector regarding the propriety of a delivery service delivering medications from a pharmacy to a central location that was not a licensed pharmacy. Kern County was looking for a way to deliver medications from Kern Medical Center's two outpatient pharmacies, i.e., Respondent KMC dba Sagebrush Medical Plaza Pharmacy and KMC dba Campus Pharmacy, to Kern County employees who received insurance through the Kern Legacy Health Plan. On April 19, 2013, the Board Inspector advised Respondent Amos that there was no pharmacy law that allowed for this conduct without a waiver from the Board of Pharmacy.

15. Despite the admonishment from the Board Inspector, in July 2013, Respondent Amos sent an internal email in which she stated that the "current practice of having a courier deliver to the downtown site is allowed -- no exception required. Having our clients pick up their prescriptions from the courier is allowed -- no exception required."

1           16. In August 2014, the Board Inspector learned for the first time that in July 2013, the  
2 Kern Legacy Health Plan had established a prescription medication pick-up and drop-off location  
3 for its members operated by Kern Medical Center at the County Administration Building located  
4 at 1115 Truxtun Avenue in Bakersfield, California.

5           17. On August 11, 2014, the Board Inspector sent an email to the Kern Legacy Health  
6 Plan stating that Respondent Amos had been advised that the pharmacy law did not permit the  
7 delivery of medication to the location in question.

8           18. On August 12, 2014, Kern County Interim Senior Outpatient Pharmacist Jeremiah  
9 Josen responded to the Board Inspector. Mr. Josen indicated that he believed that the Board had  
10 given Kern Medical Center permission to run the delivery service, but he was unable to produce  
11 any evidence of such permission. Mr. Josen stated that the delivery service operated by having  
12 either Respondent KMC dba Sagebrush Medical Plaza Pharmacy or KMC dba Campus Pharmacy  
13 send a pharmacy technician to the County Administration Building to meet a patient and the  
14 deliver the medication.

15           19. On August 15, 2014, the Board Inspector spoke on the phone with Kern Medical  
16 Center Chief Operating Officer Jared Leavitt. Mr. Leavitt described the delivery service as only  
17 for employees of the County Administration Building. He further explained that there was an  
18 office location staffed with a pharmacy technician and that patients would pick up medications at  
19 scheduled times, which had been coordinated by the pharmacy technician. He also stated that the  
20 pharmacy technician faxed prescriptions from that office to either Respondent KMC dba  
21 Sagebrush Medical Plaza Pharmacy or KMC dba Campus Pharmacy.

22           20. Also on August 15, 2014, the Board Inspector visited the location at the County  
23 Administration Building where the pick-ups and drop-offs occurred. The Inspector observed an  
24 office with a glass front with the signage "Kern Legacy Health Plan." There was a pharmacy  
25 technician in the check-in area of the office. The technician indicated that patients would  
26 complete a "Patient Intake Form" which authorized either Respondent KMC dba Sagebrush  
27 Medical Plaza Pharmacy or KMC dba Campus Pharmacy to deliver filled prescriptions to the site.  
28 The technician would also schedule delivery times and the delivery person would give the filled



1 prescriptions one at a time to the patients in the office area. The technician would also accept  
2 hard copies of prescriptions and fax the prescriptions to either of the two pharmacies. She would  
3 store the prescriptions in a locked "bank bag" until they were picked up by the pharmacies. The  
4 technician indicated that any Kern Legacy Health Plan member could use the delivery service, not  
5 just people who worked at the County Administration Building, as Mr. Leavitt had indicated.

6 21. While the Board Inspector was visiting the Kern Legacy Health Plan Office, she  
7 observed numerous pharmacy records that were stored in the office. The Board Inspector  
8 searched a three drawer unlocked file cabinet and counted 1660 records of transactions, including  
9 995 copies of prescriptions. Records for Respondent KMC dba Sagebrush Medical Plaza  
10 Pharmacy included copies of new prescriptions for controlled substances, requests for transfers of  
11 prescriptions, and a copy of a facsimile cover sheet to Respondent KMC dba Sagebrush Medical  
12 Plaza Pharmacy from "KLHP Pharmacy" (Kern Legacy Health Plan Pharmacy, which is an  
13 unlicensed entity).

14 22. On September 15, 2014, the Board Inspector received a statement from Respondent  
15 Amos in which she acknowledged that she developed the plan to create the Kern Legacy Health  
16 Plan Office at the County Administration Building and the prescription pick-up and drop-off  
17 service.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Unauthorized Receipt and Delivery of Prescriptions and Prescription Medication)**

20 23. Respondent KMC dba Sagebrush Medical Plaza Pharmacy, Respondent KCHA dba  
21 Sagebrush Medical Plaza Pharmacy, Respondent Torres, and Respondent Amos are subject to  
22 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
23 of Regulations, title 16, section 1713, subdivision (a), on the grounds of unprofessional conduct in  
24 that Respondent Amos created a central delivery to an unlicensed location in the Kern Legacy  
25 Health Plan Office, located at 1115 Truxtun Avenue in Bakersfield, California. Between July  
26 2013 and August 2014, Respondent KMC dba Sagebrush Medical Plaza Pharmacy delivered  
27 prescriptions to Kern Legacy Health Plan members, who picked up their prescriptions at an  
28 assigned time at the Kern Legacy Health Plan Office, which was not licensed as a retail pharmacy.

1 The Kern Legacy Health Plan Office also accepted and received original prescriptions brought in  
2 by patients and faxed the prescriptions to Respondent KMC dba Sagebrush Medical Plaza  
3 Pharmacy. The original prescriptions were kept at the Kern Legacy Health Plan Office until they  
4 were delivered to Respondent KMC dba Sagebrush Medical Plaza Pharmacy. The Kern Legacy  
5 Health Plan Office also faxed copies of patient prescription and patient profiles from other  
6 pharmacies to Respondent KMC dba Sagebrush Medical Plaza Pharmacy with a request for a  
7 prescription transfer. Respondent Torres was the PIC of Respondent KMC dba Sagebrush  
8 Medical Plaza Pharmacy while this conduct occurred. Respondent Amos created the pickup and  
9 delivery process at the Kern Legacy Health Plan Office. Complainant incorporates by reference  
10 Paragraphs 13 through 21 as though fully set forth herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unauthorized Deposit of Prescription)**

13 24. Respondent KMC dba Sagebrush Medical Plaza Pharmacy, Respondent KCHA dba  
14 Sagebrush Medical Plaza Pharmacy, Respondent Torres, and Respondent Amos are subject to  
15 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
16 of Regulations, title 16, section 1713, subdivision (c), on the grounds of unprofessional conduct in  
17 that Respondent KMC dba Sagebrush Medical Plaza Pharmacy established a process whereby  
18 prescription documents were deposited at the Kern Legacy Plan Health Office, which is an  
19 unsecured, unlicensed location, and then the prescriptions were accepted by Respondent KMC  
20 dba Sagebrush Medical Plaza Pharmacy as valid prescriptions. Respondent Torres was the PIC of  
21 Respondent KMC dba Sagebrush Medical Plaza Pharmacy while this conduct occurred.  
22 Respondent Amos created and established this process. Complainant incorporates by reference  
23 Paragraphs 13 through 21 as though fully set forth herein.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Unauthorized Electronic Transmission of Prescriptions)**

26 25. Respondent KMC dba Sagebrush Medical Plaza Pharmacy, Respondent KCHA dba  
27 Sagebrush Medical Plaza Pharmacy, Respondent Torres, and Respondent Amos are subject to  
28 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code

1 of Regulations, title 16, section 1717.4, subdivision (a), on the grounds of unprofessional conduct  
2 in that Respondent KMC dba Sagebrush Medical Plaza Pharmacy established an unlicensed, off-  
3 site location at the Kern Legacy Health Plan Office, which faxed hard copies of physician  
4 prescriptions to Respondent KMC dba Sagebrush Medical Plaza Pharmacy. Respondent Torres  
5 was the PIC of Respondent KMC dba Sagebrush Medical Plaza Pharmacy while this conduct  
6 occurred. Respondent Amos created the pickup and delivery process at the Kern Legacy Health  
7 Plan Office. Complainant incorporates by reference Paragraphs 13 through 21 as though fully set  
8 forth herein.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Storage of Pharmacy Records at an Unlicensed Location)**

11 26. Respondent KMC dba Sagebrush Medical Plaza Pharmacy, Respondent KCHA dba  
12 Sagebrush Medical Plaza Pharmacy, Respondent Torres, and Respondent Amos are subject to  
13 disciplinary action under Code section 4301, subdivision (o), in conjunction with Code section  
14 4105, subdivision (a), on the grounds of unprofessional conduct in that Respondent KMC dba  
15 Sagebrush Medical Plaza Pharmacy retained records of acquisition and disposition of dangerous  
16 drugs at an unlicensed location, the Kern Legacy Health Plan Office. Respondent Torres was the  
17 PIC of Respondent KMC dba Sagebrush Medical Plaza Pharmacy while this conduct occurred.  
18 Respondent Amos created and established this process. Complainant incorporates by reference  
19 Paragraphs 13 through 21 as though fully set forth herein.

20 **PRAYER**

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

- 23 1. Revoking or suspending Original Permit Number PHE 40876, issued to KMC dba  
24 Sagebrush Medical Plaza Pharmacy;
- 25 2. Revoking or suspending Original Permit Number PHE 54461, issued to KCHA dba  
26 Sagebrush Medical Plaza Pharmacy;
- 27 3. Revoking or suspending Pharmacist License Number RPH 55644, issued to Angela  
28 Marie Torres;

1 4. Revoking or suspending Pharmacist License Number RPH 36840, issued to Aniece  
2 Louise Amos;

3 5. Ordering KMC dba Sagebrush Medical Plaza Pharmacy, KCHA dba Sagebrush  
4 Medical Plaza Pharmacy, Angela Marie Torres, and Aniece Louise Amos to pay the Board the  
5 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
6 Professions Code section 125.3; and,

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

8  
9 DATED: 10/30/17 

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

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**A C C U S A T I O N**

18 **Hospital Pharmacy Permit No. PHE 40876,**

19 **ANGELA MARIE TORRES**  
20 **11501 Valley Forge Way**  
21 **Bakersfield, CA 93312**

22 **Pharmacist License No. RPH 55644,**

23 **and**

24 **ANIECE LOUISE AMOS**  
25 **555 Fairbanks St.**  
26 **Corona, CA 92879**

27 **Pharmacist License No. RPH 36840**

28 Respondents.

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.





maintained electronically.

"(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

"(e)(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter."

10. California Code of Regulations, title 16, section 1713 states:

"(a) Except as otherwise provided in this Division, no licensee shall participate in any arrangement or agreement, whereby prescriptions, or prescription medications, may be left at, picked up from, accepted by, or delivered to any place not licensed as a retail pharmacy.

"(b) A licensee may pick up prescriptions at the office or home of the prescriber or pick up or deliver prescriptions or prescription medications at the office of or a residence designated by the patient or at the hospital, institution, medical office or clinic at which the patient receives health care services. In addition, the Board may, in its sole discretion, waive application of subdivision (a) for good cause shown.

"(c) A patient or the patient's agent may deposit a prescription in a secure container that is at the same address as the licensed pharmacy premises. The pharmacy shall be responsible for the security and confidentiality of the prescriptions deposited in the container.

"(d) A pharmacy may use an automated delivery device to deliver previously dispensed prescription medications provided:

"(1) Each patient using the device has chosen to use the device and signed a written consent form demonstrating his or her informed consent to do so.

"(2) A pharmacist has determined that each patient using the device meets inclusion criteria for use of the device established by the pharmacy prior to delivery of prescription medication to the patient.

"(3) The device has a means to identify each patient and only release that patient's prescription medications.

"(4) The pharmacy does not use the device to deliver previously dispensed prescription medications to any patient if a pharmacist determines that such patient requires counseling as set forth in section 1707.2(a)(2).

"(5) The pharmacy provides an immediate consultation with a pharmacist, either in-person or via telephone, upon the request of a patient.

"(6) The device is located adjacent to the secure pharmacy area.

"(7) The device is secure from access and removal by unauthorized individuals.

"(8) The pharmacy is responsible for the prescription medications stored in the device.

"(9) Any incident involving the device where a complaint, delivery error, or



1 omission has occurred shall be reviewed as part of the pharmacy's quality  
2 assurance program mandated by Business and Professions Code section  
3 4125.

4 "(10) The pharmacy maintains written policies and procedures pertaining to  
5 the device as described in subdivision (e).

6 "(e) Any pharmacy making use of an automated delivery device as permitted by  
7 subdivision (d) shall maintain, and on an annual basis review, written policies and  
8 procedures providing for:

9 "(1) Maintaining the security of the automated delivery device and the  
10 dangerous drugs within the device.

11 "(2) Determining and applying inclusion criteria regarding which medications  
12 are appropriate for placement in the device and for which patients, including  
13 when consultation is needed.

14 "(3) Ensuring that patients are aware that consultation with a pharmacist is  
15 available for any prescription medication, including for those delivered via the  
16 automated delivery device.

17 "(4) Describing the assignment of responsibilities to, and training of,  
18 pharmacy personnel regarding the maintenance and filing procedures for the  
19 automated delivery device.

20 "(5) Orienting participating patients on use of the automated delivery device,  
21 notifying patients when expected prescription medications are not available in  
22 the device, and ensuring that patient use of the device does not interfere with  
23 delivery of prescription medications.

24 "(6) Ensuring the delivery of medications to patients in the event the device is  
25 disabled or malfunctions.

26 "(f) Written policies and procedures shall be maintained at least three years beyond the  
27 last use for an automated delivery device.

28 "(g) For the purposes of this section only, 'previously-dispensed prescription  
medications' are those prescription medications that do not trigger a non-discretionary  
duty to consult under section 1707.2(b)(1), because they have been previously  
dispensed to the patient by the pharmacy in the same dosage form, strength, and with  
the same written directions."

11. 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

1 registry number may be omitted if they are on file and readily retrievable in the  
2 receiving pharmacy.

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

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

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

17 "(g) Electronic equipment for transmitting prescriptions (or electronic transmittal  
18 technology) shall not be supplied or used so as to violate or circumvent Business and  
19 Professions Code section 4000 et seq., Health and Safety Code section 11150 et seq.,  
20 or any regulations of the board.

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

### 25 **COST RECOVERY**

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

### 29 **RELEVANT BACKGROUND FACTS**

30 13. In April 2013, Respondent Amos, who was then the Director of Pharmacy for Kern  
31 Medical Center, had multiple communications with a Board Inspector regarding the propriety of a  
32 delivery service delivering medications from a pharmacy to a central location that was not a  
33 licensed pharmacy. Kern County was looking for a way to deliver medications from Kern Medical  
34 Center's two outpatient pharmacies, i.e., Respondent Pharmacy and Kern Medical Center Campus  
35 Pharmacy, to Kern County employees who received insurance through the Kern Legacy Health  
36

1 Plan. On April 19, 2013, the Board Inspector advised Respondent Amos that there was no  
2 pharmacy law that allowed for this conduct without a waiver from the Board of Pharmacy.

3 14. Despite the admonishment from the Board Inspector, in July 2013, Respondent Amos  
4 sent an internal email in which she stated that the "current practice of having a courier deliver to  
5 the downtown site is allowed – no exception required. Having our clients pick up their  
6 prescriptions from the courier is allowed – no exception required."

7 15. In August 2014, the Board Inspector learned for the first time that in July 2013, the  
8 Kern Legacy Health Plan had established a prescription medication pick-up and drop-off location  
9 for its members operated by Kern Medical Center at the County Administration Building located at  
10 1115 Truxtun Avenue in Bakersfield, California.

11 16. On August 11, 2014, the Board Inspector sent an email to the Kern Legacy Health  
12 Plan stating that Respondent Amos had been advised that the pharmacy law did not permit the  
13 delivery of medication to the location in question.

14 17. On August 12, 2014, Kern County Interim Senior Outpatient Pharmacist Jeremiah  
15 Joson responded to the Board Inspector. Mr. Joson indicated that he believed that the Board had  
16 given Kern Medical Center permission to run the delivery service, but he was unable to produce  
17 any evidence of such permission. Mr. Joson stated that the delivery service operated by having  
18 either Respondent Pharmacy or Kern Medical Center Campus Pharmacy send a pharmacy  
19 technician to the County Administration Building to meet a patient and the deliver the medication.

20 18. On August 15, 2014, the Board Inspector spoke on the phone with Kern Medical  
21 Center Chief Operating Officer Jared Leavitt. Mr. Leavitt described the delivery service as only  
22 for employees of the County Administration Building. He further explained that there was an  
23 office location staffed with a pharmacy technician and that patients would pick up medications at  
24 scheduled times, which had been coordinated by the pharmacy technician. He also stated that the  
25 pharmacy technician faxed prescriptions from that office to either Respondent Pharmacy or Kern  
26 Medical Center Campus Pharmacy.

27 19. Also on August 15, 2014, the Board Inspector visited the location at the County  
28 Administration Building where the pick-ups and drop-offs occurred. The Inspector observed an

1 office with a glass front with the signage "Kern Legacy Health Plan." There was a pharmacy  
2 technician in the check-in area of the office. The technician indicated that patients would complete  
3 a "Patient Intake Form" which authorized either Respondent Pharmacy or Kern Medical Center  
4 Campus Pharmacy to deliver filled prescriptions to the site. The technician would also schedule  
5 delivery times and the delivery person would give the filled prescriptions one at a time to the  
6 patients in the office area. The technician would also accept hard copies of prescriptions and fax  
7 the prescriptions to either of the two pharmacies. She would store the prescriptions in a locked  
8 "bank bag" until they were picked up by the pharmacies. The technician indicated that any Kern  
9 Legacy Health Plan member could use the delivery service, not just people who worked at the  
10 County Administration Building, as Mr. Leavitt had indicated.

11 20. While the Board Inspector was visiting the Kern Legacy Health Plan Office, she  
12 observed numerous pharmacy records that were stored in the office. The Board Inspector  
13 searched a three drawer unlocked file cabinet and counted 1660 records of transactions, including  
14 995 copies of prescriptions. Records for Respondent Pharmacy included copies of new  
15 prescriptions for controlled substances, requests for transfers of prescriptions, and a copy of a  
16 facsimile cover sheet to Respondent Pharmacy from "KLHP Pharmacy" (Kern Legacy Health Plan  
17 Pharmacy, which is an unlicensed entity).

18 21. On September 15, 2014, the Board Inspector received a statement from Respondent  
19 Amos in which she acknowledged that she developed the plan to create the Kern Legacy Health  
20 Plan Office at the County Administration Building and the prescription pick-up and drop-off  
21 service.

### 22 **FIRST CAUSE FOR DISCIPLINE**

#### 23 **(Unauthorized Receipt and Delivery of Prescriptions and Prescription Medication)**

24 22. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
25 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
26 of Regulations, title 16, section 1713, subdivision (a), on the grounds of unprofessional conduct in  
27 that Respondent Amos created a central delivery to an unlicensed location in the Kern Legacy  
28 Health Plan Office, located at 1115 Truxtun Avenue in Bakersfield, California. Between July 2013

1 and August 2014, Respondent Pharmacy delivered prescriptions to Kern Legacy Health Plan  
2 members, who picked up their prescriptions at an assigned time at the Kern Legacy Health Plan  
3 Office, which was not licensed as a retail pharmacy. The Kern Legacy Health Plan Office also  
4 accepted and received original prescriptions brought in by patients and faxed the prescriptions to  
5 Respondent Pharmacy. The original prescriptions were kept at the Kern Legacy Health Plan  
6 Office until they were delivered to Respondent Pharmacy. The Kern Legacy Health Plan Office  
7 also faxed copies of patient prescription and patient profiles from other pharmacies to Respondent  
8 Pharmacy with a request for a prescription transfer. Respondent Torres was the PIC of  
9 Respondent Pharmacy while this conduct occurred. Respondent Amos created the pickup and  
10 delivery process at the Kern Legacy Health Plan Office. Complainant incorporates by reference  
11 Paragraphs 13 through 21 as though fully set forth herein.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unauthorized Deposit of Prescription)**

14 23. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
15 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
16 of Regulations, title 16, section 1713, subdivision (c), on the grounds of unprofessional conduct in  
17 that Respondent Pharmacy established a process whereby prescription documents were deposited  
18 at the Kern Legacy Plan Health Office, which is an unsecured, unlicensed location, and then the  
19 prescriptions were accepted by Respondent Pharmacy as valid prescriptions. Respondent Torres  
20 was the PIC of Respondent Pharmacy while this conduct occurred. Respondent Amos created and  
21 established this process. Complainant incorporates by reference Paragraphs 13 through 21 as  
22 though fully set forth herein.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unauthorized Electronic Transmission of Prescriptions)**

25 24. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
26 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
27 of Regulations, title 16, section 1717.4, subdivision (a), on the grounds of unprofessional conduct  
28 in that Respondent Pharmacy established an unlicensed, off-site location at the Kern Legacy Health

1 Plan Office, which faxed hard copies of physician prescriptions to Respondent Pharmacy.  
2 Respondent Torres was the PIC of Respondent Pharmacy while this conduct occurred.  
3 Respondent Amos created the pickup and delivery process at the Kern Legacy Health Plan Office.  
4 Complainant incorporates by reference Paragraphs 13 through 21 as though fully set forth herein.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Storage of Pharmacy Records at an Unlicensed Location)**

7 25. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
8 disciplinary action under Code section 4301, subdivision (o), in conjunction with Code section  
9 4105, subdivision (a), on the grounds of unprofessional conduct in that Respondent Pharmacy  
10 retained records of acquisition and disposition of dangerous drugs at an unlicensed location, the  
11 Kern Legacy Health Plan Office. Respondent Torres was the PIC of Respondent Pharmacy while  
12 this conduct occurred. Respondent Amos created and established this process. Complainant  
13 incorporates by reference Paragraphs 13 through 21 as though fully set forth herein.

14 **PRAYER**

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

- 17 1. Revoking or suspending Hospital Pharmacy Permit Number PHE 40876, issued to  
18 Kern Medical Center dba Sagebrush Medical Plaza Pharmacy;
- 19 2. Revoking or suspending Pharmacist License Number RPH 55644, issued to Angela  
20 Marie Torres;
- 21 3. Revoking or suspending Pharmacist License Number RPH 36840, issued to Aniece  
22 Louise Amos;
- 23 4. Ordering Kern Medical Center dba Sagebrush Medical Plaza Pharmacy, Angela Marie  
24 Torres, and Aniece Louise Amos to pay the Board of Pharmacy the reasonable costs of the  
25 investigation and enforcement of this case, pursuant to Business and Professions Code section  
26 125.3; and,

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

DATED: 5/4/16 Virginia Herold

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

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