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

In the Matter of the Accusation and Petition to Revoke Probation Against: **KIRPAL ENTERPRISES, INC. dba THE MEDICINE SHOPPE NO. 0821, KIRPAL S. GAGNEJA, PRESIDENT, RPH 46385, STEPHEN CHERMAN, PHARMACIST-IN- CHARGE** **16915 Devonshire Street** **Granada Hills, CA 91344** **Original Pharmacy Permit No. 46075** Respondent.	Case No. 5599 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On about October 10, 2002, the Board of Pharmacy issued Original Pharmacy Permit Number 46075 to Kirpal Enterprises, Inc. to do business as The Medicine Shoppe No. 0821 (Respondent Medicine Shoppe) with Kirpal S. Gagneja (RPH 46385) as President and Stephen Cherman as Pharmacist-in-Charge. The Original Pharmacy Permit was in full force and effect at

all times relevant to the charges brought herein and will expire on October 1, 2016, unless renewed.

PROBATIONARY TERMS

3. In a disciplinary action entitled "In the Matter of the Accusation Against Kirpal Enterprises, Inc. dba The Medicine Shoppe No. 0821, Kirpal S. Gagneja, President, RPH 46385, Stephen Cherman, Pharmacist-in-Charge and Stephan Alan Cherman, RPH 26341" Case No. 3920, the Board of Pharmacy issued a Decision and Order effective October 22, 2014, in which Respondent Medicine Shoppe's Original Pharmacy Permit and Respondent Cherman's Original Pharmacist License were revoked. However, the revocations were stayed and Respondent Medicine Shoppe's Original Pharmacy Permit and Respondent Cherman's Original Pharmacist License were placed on probation for four (4) years with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

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 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 4300(a) of the Code states that every license issued by the Board may be suspended or revoked.

7. 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."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1709, states:

. . . .

"(b) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original permit was issued, shall require written notification to the board within 30 days.

"(c) The following shall constitute a transfer of permit and require application for a change of ownership: any transfer of a beneficial interest in a business entity licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license."

COST RECOVERY

9. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

ACCUSATION AGAINST RESPONDENT MEDICINE SHOPPE

FIRST CAUSE FOR DISCIPLINE

(Change of Ownership-Transfer of Beneficial Interest; Failure to Notify the Board)

10. Respondent Medicine Shoppe is subject to disciplinary action under California Code of Regulation, title 16, section 1709, subdivision (b), in that Respondent Medicine Shoppe did not give written notification to the Board within 30 days of the transfer, in a transaction, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original permit was issued. The circumstances are as follows:

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11. The Medicine Shoppe located at 16915 Devonshire Street, Granada Hills, CA 91344 was issued Original Pharmacy Permit No. 46075 on October 10, 2002 to Kirpal Enterprises Inc. On or about September 10, 2008, the beneficial interest of Kirpal Enterprises changed 100% from Kirpal Gagneja to Harbhajan Gagneja and the Board was not notified of this change in beneficial interest.

SECOND CAUSE FOR DISCIPLINE

(Change of Ownership-Failure to Notify the Board)

12. Respondent Medicine Shoppe is subject to disciplinary action under California Code of Regulation, title 16, section 1709, subdivision (c) in that Respondent Medicine Shoppe transferred a beneficial interest in a business entity licensed by the board, in a transaction, to a person, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license. Complainant refers to, and by this reference incorporates, the allegation set forth in paragraph 11, as though set forth fully.

PETITION TO REVOKE PROBATION AGAINST RESPONDENT MEDICINE SHOPPE

JURISDICTION

13. This Petition to Revoke Probation is brought before the Board, Department of Consumer Affairs under Probation Term and Condition Number 7 of the Decision and Order "In the Matter of the Accusation Against Kirpal Enterprises, Inc. dba The Medicine Shoppe No. 0821, Kirpal S. Gagneja, President, RPH 46385, Stephen Cherman, Pharmacist-in-Charge and Stephan Alan Cherman, RPH 26341", Case No. 3920. That term and condition states:

Violation of Probation

If Respondents Medicine Shoppe and Cherman have not complied with any term or condition of probation, the Board shall have continuing jurisdiction over the Respondents, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If either Respondent violates probation in any respect, the Board, after giving Respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order

that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondents Medicine Shoppe and Cherman during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Grounds exist to revoke Respondent Medicine Shoppe probation and reimpose the order of revocation of Respondent Medicine Shoppe's Original Pharmacy Permit in that it has violated the term and condition of it's probation as follows:

CAUSE TO REVOKE PROBATION

(Change of Ownership-Transfer of Beneficial Interest; Failure to Notify the Board)

19. At all times after the effective date of Respondent Medicine Shoppe's probation, Condition 11 stated:

Respondent Medicine Shoppe shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent's stock, and any officer, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

20. Respondent Medicine Shoppe's probation is subject to revocation because they failed to comply with Probation Condition 11, referenced above. Complainant refers to, and by this reference incorporates, the allegation set forth in paragraph 11, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation and Petition to Revoke Probation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3920 and imposing the disciplinary order that was stayed thereby revoking Original Pharmacy Permit

No. PHY 46075 issued to Kirpal Enterprises, Inc. to do business as The Medicine Shoppe No. 0821 with Kirpal S. Gagneja as President and Stephen Cherman as Pharmacist-in-Charge;

2. Revoking or suspending Original Pharmacy Permit No. PHY 46075 issued to Kirpal Enterprises, Inc. to do business as The Medicine Shoppe No. 0821 with Kirpal S. Gagneja as President and Stephen Cherman as Pharmacist-in-Charge;

4. Ordering Kirpal Enterprises, Inc. to do business as The Medicine Shoppe No. 0821 with Kirpal S. Gagneja as President and Stephen Cherman as Pharmacist-in-Charge 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; and

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

DATED: 2/24/16

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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3920

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

In the Matter of the Accusation Against: **KIRPAL ENTERPRISES, INC. dba THE MEDICINE SHOPPE NO. 0821, KIRPAL S. GAGNEJA, PRESIDENT, RPH 46385, STEPHEN CHERMAN, PHARMACIST-IN-CHARGE** 16915 Devonshire Street Granada Hills, CA 91344 Original Pharmacy Permit No. 46075 and **STEPHEN ALAN CHERMAN** 16915 Devonshire Street Granada Hills, CA 91344 Original Pharmacist License No. RPH 26341 Respondents.	Case No. 3920 OAH No. 2013120254

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 22, 2014.

It is so ORDERED on October15, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
THOMAS L. RINALDI
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **KIRPAL ENTERPRISES, INC. dba THE MEDICINE SHOPPE NO. 0821, KIRPAL S. GAGNEJA, PRESIDENT, RPH 46385, STEPHEN CHERMAN, PHARMACIST-IN- CHARGE** **16915 Devonshire Street** **Granada Hills, CA 91344** **Original Pharmacy Permit No. 46075** **and** **STEPHEN ALAN CHERMAN** **16915 Devonshire Street** **Granada Hills, CA 91344** **Original Pharmacist License No. RPH 26341** Respondents.	Case No. 3920 OAH No. 2013120254 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

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PARTIES

1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Michael Brown, Deputy Attorney General.

2. Respondents Kirpal Enterprises, Inc. dba The Medicine Shoppe No. 0821; Stephen Cherman (Respondents) is represented in this proceeding by attorney Tony J. Park, whose address is: California Pharmacy Lawyers, 6789 Quail Hill Parkway, #405, Irvine, CA 92603.

Kirpal Enterprises, Inc. dba The Medicine Shoppe No. 0821

3. On or about October 10, 2002, the Board of Pharmacy issued Original Pharmacy Permit No. PHY 46075 to Kirpal Enterprises, Inc. doing business as The Medicine Shoppe No. 0821; Stephen Cherman (Respondent Medicine Shoppe) with Kirpal S. Gagneja (RPH 46385) as President and Stephan Cherman as Pharmacist-in-Charge. The Original Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2014, unless renewed.

Stephen Alan Cherman

4. On or about November 6, 1969, the Board of Pharmacy issued Original Pharmacist License Number RPH 26341 to Stephen Alan Cherman (Respondent Cherman). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2016, unless renewed.

JURISDICTION

5. Accusation No. 3920 was filed before the Board of Pharmacy (Board) , Department of Consumer Affairs, and is currently pending against Respondents Medicine Shoppe and Cherman. The Accusation and all other statutorily required documents were properly served on Respondents on November 22, 2013. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 3920 is attached as exhibit A and incorporated herein by reference.

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ADVISEMENT AND WAIVERS

6. Respondents Medicine Shoppe and Cherman have carefully read, fully discussed with counsel, and understand the charges and allegation in Accusation No. 3920. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondents Medicine Shoppe and Cherman are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondents Medicine Shoppe and Cherman voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

9. Respondents Medicine Shoppe and Cherman admit the truth of each and every charge and allegation in Accusation No. 3920. Respondents agree that their licenses are subject to discipline and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents Medicine Shoppe and Cherman understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal

action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacy Permit No. PHY 46075 issued to Respondent Medicine Shoppe and Original Pharmacist License Number RPH 26341 issued to Respondent Cherman are revoked. However, each revocation is stayed and each Respondent is placed on probation for four (4) years on the following terms and conditions.

TERMS APPLICABLE TO BOTH RESPONDENTS

1. **Obey All Laws**

Respondents Medicine Shoppe and Cherman shall obey all state and federal laws and regulations.

Respondents Medicine Shoppe and Cherman shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondents' licenses or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. **Report to the Board**

Respondents Medicine Shoppe and Cherman shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, each Respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. **Interview with the Board**

Upon receipt of reasonable prior notice, Respondents Medicine Shoppe and Cherman shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff**

Respondents Medicine Shoppe and Cherman shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondents' compliance with the

terms and conditions of their probation. Failure to cooperate shall be considered a violation of probation.

5. **Probation Monitoring Costs**

Respondents Medicine Shoppe and Cherman shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

6. **Status of License**

Respondents Medicine Shoppe and Cherman shall, at all times while on probation, maintain an active, current license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation. If Respondents Medicine Shoppe and Cherman submits an application to the Board, and the application is approved, for a change of location, change of permit or change of ownership, the Board shall retain continuing jurisdiction over the license, and the Respondents Medicine Shoppe and Cherman shall remain on probation as determined by the Board.

If either Respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication Respondents' license shall be subject to all terms and conditions of this probation not previously satisfied.

7. **Violation of Probation**

If Respondents Medicine Shoppe and Cherman have not complied with any term or condition of probation, the Board shall have continuing jurisdiction over the Respondents, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If either Respondent violates probation in any respect, the Board, after giving Respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating

that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondents Medicine Shoppe and Cherman during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

8. **Completion of Probation**

Upon written notice by the Board or its designee indicating successful completion of probation, Respondents Medicine Shoppe and Cherman licenses will be fully restored.

ADDITIONAL TERMS APPLICABLE TO RESPONDENT MEDICINE SHOPPE

9. **License Surrender While on Probation/Suspension**

Following the effective date of this decision, should Respondent Medicine Shoppe discontinue business, Respondent Medicine Shoppe may tender the premise license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent Medicine Shoppe will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent Medicine Shoppe shall relinquish the premise wall and renewal license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent Medicine Shoppe shall further submit a completed Discontinuance of Business form according to Board guidelines and shall notify the Board of the records inventory transfer.

Respondent Medicine Shoppe shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent Medicine Shoppe shall

provide a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

Respondent Medicine Shoppe may not apply for any new licensure from the Board for three (3) years from the effective date of the surrender. Respondent Medicine Shoppe shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

Respondent Medicine Shoppe further stipulates that it shall reimburse the Board for its costs of investigation and prosecution prior to the acceptance of the surrender.

10. **Notice to Employees**

Respondent Medicine Shoppe shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent Medicine Shoppe shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, Respondent Medicine Shoppe shall submit written notification to the Board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to submit such notification to the Board shall be considered a violation of probation.

"Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and relief employees and independent contractors employed or hired at any time during probation.

11. **Owners and Officers: Knowledge of the Law**

Respondent Medicine Shoppe shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent's stock, and any officer,

stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

12. **Posted Notice of Probation**

Respondent Medicine Shoppe shall prominently post a probation notice provided by the Board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation

Respondent Medicine Shoppe shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

13. **Community Services Program**

Within sixty (60) days of the effective date of this decision, Respondent Medicine Shoppe shall submit to the Board or its designee, for prior approval, a community service program in which Respondent Medicine Shoppe shall provide free health-care related services to a community or charitable facility or agency for the amount of ten thousand dollars ($10,000.00) within four (4) years of probation.

Within thirty (30) days of Board approval thereof, Respondent Medicine Shoppe shall submit documentation to the Board demonstrating commencement of the community service program. A record of this notification must be provided to the Board upon request.

Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

14. **Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, Respondent Medicine Shoppe shall pay to the Board its costs of investigation and prosecution in the amount of $3,717.12 (Three Thousand Seven Hundred Seventeen Dollars and Twelve Cents). Respondent Medicine Shoppe and Cherman shall be jointly and severally liable for payment to the Board of $3,717.12 (Three Thousand Seven Hundred Seventeen Dollars and Twelve Cents). Respondent

Medicine Shoppe shall make said payments as follows: Respondent Medicine Shoppe shall make ten (10) quarterly payments of $371.71 (Three Hundred Seventy-One Dollars and Seventy-One Cents) every ninety (90) days until the entire balance is paid in full.

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by Respondent Medicine Shoppe shall not relieve Respondent of its responsibility to reimburse the Board its costs of investigation and prosecution.

ADDITIONAL TERMS APPLICABLE TO RESPONDENT CHERMAN

15. **Continuing Education**

Respondent Cherman shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

16. **Notice to Employers**

During the period of probation, Respondent Cherman shall notify all present and prospective employers of the decision in case number 3920 and the terms, conditions and restrictions imposed on Respondent Cherman by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent Cherman undertaking any new employment, Respondent Cherman shall cause their direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent Cherman's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3920, and terms and conditions imposed thereby. It shall be Respondent Cherman's responsibility to ensure that their employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Respondent Cherman works for or is employed by or through a pharmacy employment service, Respondent Cherman must notify their direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case

number 3920 in advance of the Respondent Cherman commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent Cherman undertaking any new employment by or through a pharmacy employment service, Respondent Cherman shall cause their direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that they has read the decision in case number 3920 and the terms and conditions imposed thereby. It shall be Respondent Cherman's responsibility to ensure that their employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

17. **No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant**

During the period of probation, Respondent Cherman shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

18. **Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, Respondent Cherman shall pay to the Board its costs of investigation and prosecution in the amount of $3,717.12 (Three Thousand Seven Hundred Seventeen Dollars and Twelve Cents). Respondent Medicine Shoppe and Cherman shall be jointly and severally liable for payment to the Board of $3,717.12 (Three

Thousand Seven Hundred Seventeen Dollars and Twelve Cents). Respondent Cherman shall make said payments as follows: Respondent Cherman shall make ten (10) quarterly payments of $371.71 (Three Hundred Seventy-One Dollars and Seventy-One Cents) every ninety (90) days until the entire balance is paid in full.

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by Respondent Cherman shall not relieve Respondent of its responsibility to reimburse the Board its costs of investigation and prosecution.

19. **License Surrender While on Probation/Suspension**

Following the effective date of this decision, should Respondent Cherman cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent Cherman may tender their license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent Cherman will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the Board.

Upon acceptance of the surrender, Respondent Cherman shall relinquish their pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent Cherman may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Respondent Cherman shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

20. **Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent Cherman shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new

employer, the name of the supervisor and owner, and the work schedule if known. Respondent Cherman shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

21. **Tolling of Probation**

Except during periods of suspension, Respondent Cherman at all times while on probation, be employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent Cherman must nonetheless comply with all terms and conditions of probation.

Should Respondent Cherman, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 40 hours per calendar month in California, Respondent Cherman must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent Cherman's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which Respondent is not practicing as a pharmacist for at least 40 (forty) hours, as defined by Business and Professions Code section 4000 et seq . "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 40 (forty) hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

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22. **Remedial Education**

Within sixty (60) days of the effective date of this decision, Respondent Cherman shall submit to the Board or its designee, for prior approval, an appropriate program of remedial education related to pharmacy management. The program of remedial education shall consist of at least ten (10) hours, which shall be completed within twelve (12) months at Respondent Cherman's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

Failure to timely submit or complete the approved remedial education shall be considered a violation of probation. The period of probation will be automatically extended until such remedial education is successfully completed and written proof, in a form acceptable to the Board, is provided to the Board or its designee.

Following the completion of each course, the Board or its designee may require Respondent Cherman, at his own expense, to take an approved examination to test the Respondent's knowledge of the course. If Respondent Cherman does not achieve a passing score on the examination, this failure shall be considered a violation of probation. Any such examination failure shall require Respondent Cherman to take another course approved by the Board in the same subject area.

23. **No Ownership of Licensed Premises**

Respondent Cherman shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the Board. If Respondent Cherman currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board, Respondent Cherman may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

24. **Consultant for Owner or Pharmacist-In-Charge**

During the period of probation, Respondent Cherman shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent Cherman may be a pharmacist-in-charge. However, if during the period of probation Respondent Cherman serves as a pharmacist-in-charge, Respondent Cherman shall retain an independent consultant at their own expense who shall be responsible for reviewing pharmacy operations on a monthly basis for compliance by Respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by Respondent with the obligations of a pharmacist-in-charge. Upon request by the Respondent, the review intervals may be decreased from a monthly basis to a quarterly basis by the Board or its designee. The consultant shall be a pharmacist licensed by and not on probation with the Board and whose name shall be submitted to the Board or its designee, for prior approval, within thirty (30) days of the effective date of this decision. Respondent Cherman shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which they is not the sole owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

25. **Ethics Course**

Within sixty (60) calendar days of the effective date of this decision, Respondent Cherman shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent Cherman shall submit a certificate of completion to the Board or its designee within five days after completing the course.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Tony J. Park. I understand the stipulation and the effect it will have on my Original Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 09/01/2014

KIRPAL ENTERPRISES, INC. DBA THE MEDICINE SHOPPE NO. 0821; KIRPAL S. GAGNEJA, PRESIDENT
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney Tony J. Park. I understand the stipulation and the effect it has on my Original Pharmacist License. I enter into this settlement voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 9/2/14

STEPHEN ALAN CHERMAN
Respondent

I have read and fully discussed with Respondent Kirpal Enterprises, Inc. dba The Medicine Shoppe No. 0821; Stephen Cherman the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 09/03/2014

Tony J. Park
Attorney for Respondents

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: September 5, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General

MICHAEL BROWN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3920

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **KIRPAL ENTERPRISES, INC. dba THE MEDICINE SHOPPE NO. 0821, KIRPAL S. GAGNEJA, PRESIDENT, RPH 46385, STEPHEN CHERMAN, PHARMACIST-IN- CHARGE** **16915 Devonshire Street** **Granada Hills, CA 91344** **Original Pharmacy Permit No. 46075** **and** **STEPHEN ALAN CHERMAN** **16915 Devonshire Street** **Granada Hills, CA 91344** **Original Pharmacist License No. RPH 26341** Respondents.	Case No. 3920 **A C C U S A T I O N**

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.

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Kirpal Enterprises, Inc. dba The Medicine Shoppe No. 0821

2. On or about October 10, 2002, the Board of Pharmacy issued Original Pharmacy Permit Number 46075 to Kirpal Enterprises, Inc. to do business as The Medicine Shoppe No. 0821 (Respondent Medicine Shoppe) with Kirpal S. Gagneja (RPH 46385) as President and Stephan Cherman as Pharmacist-in-Charge. The Original Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2014, unless renewed.

Stephen Alan Cherman

3. On or about November 6, 1969, the Board of Pharmacy issued Original Pharmacist License Number RPH 26341 to Stephen Cherman (Respondent Cherman). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

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 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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

7. Section 4300(a) of the Code states that every license issued by the Board may be suspended or revoked.

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."

STATUTORY PROVISIONS

9. Section 4043 of the Code states:

"(a) 'Wholesaler' means and includes a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes possession of, any drug or device included in 4022. Unless otherwise authorized by law a wholesaler may not store, warehouse or authorize the storage or warehousing of drugs with any person or at any location not licensed by the board."

10. Section 4059 of the Code states:

. . .

"(b) This section does not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, a description of the device, and the quantity supplied."

11. Code section 4126.5, subdivision (a), provides:

"(a) A pharmacy may furnish dangerous drugs only to the following:

. . .

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

. . .

(7) To another pharmacy under common control."

12. Section 4160 of the Code states:

"(a) A person may not act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board.

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:

. . .

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

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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15. Section 4021 of the Code states:

"Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

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

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, 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 or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

17. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(c)(8) and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Selling Dangerous Drugs without a Wholesaler License)

As to Respondent Medicine Shoppe and Cherman

18. Respondents are subject to disciplinary action under section 4301, subdivisions (j) and (o) for violating section 4160, subdivision (a) for selling dangerous drugs without a wholesaler license. The circumstances are as follows:

19. On or between November 17, 2008 and May 1, 2009 and on or between March 8, 2010 and June 21, 2010, Respondents sold approximately $558,401.57 worth of dangerous drugs to Moazzem H. Chowdhury dba Desert Drugs (Desert Drugs) without a wholesaler license.

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	Date	Invoice Record	Approximate Amount
1	11/17/08	5086472	$29,810.28
2	1/16/09	5101683	$30,978.78
3	2/16/09	5109398	$30,725.29
4	3/23/09	5118598	$28,878.28
5	4/17/09	512496	$15,228.11
6	4/22/09	5126555	$18,217.48
7	5/1/09	5129239	$16,855.89
8	3/8/10	5211037	$4,536.50
9	3/8/10	5211041	$11,459.07
10	3/8/10	5211045	$8,279.99
11	3/8/10	5211046	$17,831.89
12	3/9/10	5211394	$11,247.87
13	3/22/10	5214841	$8,413.05
14	3/22/10	5214825	$4,928.29
15	3/22/10	5214831	$11,884.65
16	3/22/10	5214848	$8,564.01
17	3/25/10	5216095	$7,093.09
18	3/25/10	5216020	$13,538.21
19	4/5/10	5218890	$6,566.60
20	4/5/10	5218878	$6,123.76
21	4/5/10	5217714	$10,675.64
22	4/15/10	5222026	$3,249.51
23	4/15/10	5221993	$19,451.55
24	4/19/10	5222617	$6,715.74
25	4/20/10	5223338	$11,512.52
26	4/20/10	5223458	$10,837.33
27	4/26/10	5224720	$15,501.81
28	4/26/10	5224708	$6,610.43
29	5/5/10	5227898	$7,378.55
30	5/5/10	5227802	$9,176.29
31	5/5/10	5227789	$14,835.42
32	5/5/10	5227779	$12,074.72
33	5/6/10	5228560	$11,488.62
34	5/19/10	5231912	$6,443.70
35	5/20/10	5232375	$12,370.40
36	5/20/10	5232360	$14,762.11
37	5/21/10	5232649	$11,313.05
38	5/21/10	5232556	$12,511.09
39	6/2/10	5235364	$11,295.47

40	6/2/10	5235362	$9,798.80
41	6/2/10	5235680	$12,660.76
42	6/7/10	5237198	$9,177.14
43	6/10/10	5238199	$6,253.06
44	6/21/10	5240770	$5,880.21
45	6/21/10	5240767	$15,266.56
		Total	$558,401.57

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Furnishing Dangerous Drugs without a Prescription)

As to Respondent Medicine Shoppe and Cherman

20. Respondents are subject to disciplinary action under section 4301, subdivisions (j) and (o) for violating section 4059, subdivision (b) in that Respondents furnished prescription medications without prescriptions. The circumstances are as follows:

21. On or between November 17, 2008 and June 21 2009 and on or between March 8, 2010 and June 21, 2010, Respondents furnished approximately $558,401.57 worth of dangerous drugs to Desert Pharmacy without proper sales records that correctly documented the date and the names and addresses of the supplier and buyer.

	Date	Invoice Record	Approximate Amount
1	11/17/08	5086472	$29,810.28
2	1/16/09	5101683	$30,978.78
3	2/16/09	5109398	$30,725.29
4	3/23/09	5118598	$28,878.28
5	4/17/09	512496	$15,228.11
6	4/22/09	5126555	$18,217.48
7	5/1/09	5129239	$16,855.89
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13	3/22/10	5214841	$8,413.05
14	3/22/10	5214825	$4,928.29

15	3/22/10	5214831	$11,884.65
16	3/22/10	5214848	$8,564.01
17	3/25/10	5216095	$7,093.09
18	3/25/10	5216020	$13,538.21
19	4/5/10	5218890	$6,566.60
20	4/5/10	5218878	$6,123.76
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23	4/15/10	5221993	$19,451.55
24	4/19/10	5222617	$6,715.74
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26	4/20/10	5223458	$10,837.33
27	4/26/10	5224720	$15,501.81
28	4/26/10	5224708	$6,610.43
29	5/5/10	5227898	$7,378.55
30	5/5/10	5227802	$9,176.29
31	5/5/10	5227789	$14,835.42
32	5/5/10	5227779	$12,074.72
33	5/6/10	5228560	$11,488.62
34	5/19/10	5231912	$6,443.70
35	5/20/10	5232375	$12,370.40
36	5/20/10	5232360	$14,762.11
37	5/21/10	5232649	$11,313.05
38	5/21/10	5232556	$12,511.09
39	6/2/10	5235364	$11,295.47
40	6/2/10	5235362	$9,798.80
41	6/2/10	5235680	$12,660.76
42	6/7/10	5237198	$9,177.14
43	6/10/10	5238199	$6,253.06
44	6/21/10	5240770	$5,880.21
45	6/21/10	5240767	$15,266.56
		Total	$558,401.57

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 Pharmacy Permit Number 46075, issued to Kirpal Enterprises, Inc. to do business as The Medicine Shoppe No. 0821;

2. Revoking or suspending Original Pharmacist License Number RPH 26341, issued to Stephen Cherman;

3. Ordering the Medicine Shoppe and Stephen Cherman 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; and

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

DATED: 11/4/13

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

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