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

11 In the Matter of the Accusation Against:  
12  
13 **NADA VICIJAN dba WEST MODESTO**  
**PHARMACY**  
14 **314 I Street**  
**Modesto, CA 95351**  
15 **Original Permit Number No. PHY 52073**  
16 **and**  
17 **NADA VICIJAN**  
**3423 Pock Lane**  
18 **Stockton, CA 95205**  
19 **Original Pharmacist License No. RPH 41607**  
20 Respondents.

Case No. 5901

**ACCUSATION**

21  
22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
26 2. On or about June 1, 2015, the Board of Pharmacy issued Original Permit Number  
27 PHY 52073 to Nada Vicijan dba West Modesto Pharmacy (Respondent West Modesto). Nada  
28 Vicijan is and has been the Pharmacist-in-Charge at Respondent West Modesto since June 1,

1 2015. The Original Permit was in full force and effect at all times relevant to the charges brought  
2 herein and will expire on June 1, 2017, unless renewed.

3 3. On or about April 23, 1988, the Board of Pharmacy issued Original Pharmacist  
4 License Number RPH 41607 to Nada Vicijan (Respondent Vicijan). The Original Pharmacist  
5 License was in full force and effect at all times relevant to the charges brought herein and will  
6 expire on December 31, 2017, unless renewed.

7 **JURISDICTION**

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

11 5. Code section 4300.1 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 **BUSINESS AND PROFESSIONS CODE**

18 6. Code section 4301 states, in pertinent part:

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

22 "...

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

25 "...

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

3 "...

4 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the  
5 board. . . ."

### 6 CALIFORNIA CODE OF REGULATIONS

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

8 "(a) Each permit to operate a pharmacy shall show the name and address of the pharmacy,  
9 the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge.  
10 Each pharmacy shall, in its initial application on the annual renewal form, report the name of the  
11 pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a  
12 corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall  
13 be reported to the Board within 30 days.

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

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

### 22 COST RECOVERY

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

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**BACKGROUND**

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2           9.     On or about October 2, 2001, the Board issued pharmacy permit PHY 45161 to  
3 Westside Plaza Pharmacy, located at 314 I Street in Modesto, California. On or about January 8,  
4 2016, the Board canceled this pharmacy permit.

5           10.    In or about October 2012, the United States Drug Enforcement Administration (DEA)  
6 requested the Board's assistance in inspecting and investigating various pharmacies, including  
7 Westside Plaza Pharmacy, with regard to the purchase and furnishing of controlled substances.  
8 Westside Plaza Pharmacy had allegedly purchased medications containing hydrocodone and  
9 oxycodone from several different wholesalers and filled numerous prescriptions for the drugs  
10 based upon prescriptions issued by Drs. T.B. and C.P.

11           11.    On or about December 11, 2012, two Board Inspectors, along with several DEA  
12 agents, inspected Westside Plaza Pharmacy. After the inspection was completed, the Pharmacist-  
13 in-Charge and owner of Westside Plaza Pharmacy, Suwonnee Pongnorsing, surrendered Westside  
14 Plaza Pharmacy's DEA registration BW7566170, which allowed Westside Plaza Pharmacy to  
15 possess and dispense controlled substances.

16           12.    When the December 11, 2012 inspection of Westside Plaza Pharmacy was conducted,  
17 Respondent Vicijan was working at Westside Plaza Pharmacy as a pharmacist.

18           13.    Following the December 11, 2012 inspection of Westside Plaza Pharmacy, the Board  
19 conducted an investigation into Westside Plaza Pharmacy which revealed that: (1) between  
20 February and November 2012, Pharmacist-in-Charge and owner Suwonnee Pongnorsing failed to  
21 reverse the claims on at least twenty-nine prescriptions or adjust the billings on the claims even  
22 though Ms. Pongnorsing had not dispensed the medications to the patients, or had dispensed only  
23 a portion of the medications, and had received payment for the drugs from the patients' insurance  
24 companies; (2) on at least six occasions, Westside Plaza Pharmacy failed to deliver controlled  
25 substance prescriptions, each of which were filled by another pharmacy, to the patients, and kept  
26 the prescriptions within Westside Plaza Pharmacy's inventory, and failed to notify the other  
27 pharmacy that the insurance billings/claims on the prescriptions needed to be reversed;  
28 (3) Pharmacist-in-Charge and owner Suwonnee Pongnorsing failed to keep proper invoices,

1 inventory, and dispensing records for controlled substances; and (4) Westside Plaza Pharmacy  
2 dispensed numerous prescriptions for controlled substances to over sixty-three of Dr. T.B.'s  
3 patients, when Pharmacist-in-Charge and owner Suwonnee Pongnorsing knew, or had reason to  
4 know, of Dr. T.B.'s repetitive prescribing pattern of highly abused controlled substances, the  
5 location of Dr. T.B.'s practice in relation to Westside Plaza Pharmacy, the location of Dr. T.B.'s  
6 patients in relation to Westside Plaza Pharmacy, and that the prescriptions were not issued for a  
7 legitimate medical purpose.

8 14. On May 28, 2015, an Accusation was filed against Westside Plaza Pharmacy and  
9 Suwonnee Pongnorsing, seeking to discipline Westside Plaza Pharmacy's pharmacy permit and  
10 Ms. Pongnorsing's pharmacist license.

11 15. On or about December 23, 2015, the Board's enforcement team became aware that on  
12 or about June 1, 2015, Board licensing staff had issued a new pharmacy permit to Respondent  
13 West Modesto, located at the same address as Westside Plaza Pharmacy (they are the same  
14 pharmacy, just with a new name).

15 16. Under the Board's pharmacy laws, when an existing pharmacy undergoes a change in  
16 ownership, the new owner is required to submit to the Board a form indicating a change of  
17 ownership. The purpose of this requirement is to ensure that the existing pharmacy permit  
18 number, issued to the pharmacy, remains with the pharmacy location and that any pending  
19 disciplinary action against that pharmacy permit can continue, despite a change in ownership. It  
20 also ensures that any DEA registration associated with the pharmacy permit remains in effect.

21 17. No change in ownership was filed with the Board for Westside Plaza Pharmacy's  
22 permit. Instead, Respondent Vicijan submitted to the Board an application for a new permit,  
23 identifying herself as the owner and Pharmacist-in-Charge for Respondent West Modesto, which  
24 is located at the same address as Westside Plaza Pharmacy.

25 18. Obtaining a new pharmacy permit with the Board allowed Respondent Vicijan to  
26 obtain a new DEA registration, thus allowing the pharmacy to resume possessing and dispensing  
27 controlled substances.

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1           19. On or about January 6, 2016, a Board Inspector went to West Modesto  
2 Pharmacy/Westside Plaza Pharmacy to conduct an inspection and determine why Respondent  
3 Vicijan submitted to the Board an application for a new permit instead of a change of ownership.  
4 Upon the Inspector's arrival, she encountered Respondent and later, Suwonnee Pongnorsing, who  
5 was working at Respondent West Modesto as a pharmacist.

6           20. During the Board Inspector's conversation with Respondent Vicijan on January 6,  
7 2016, the Inspector requested a sales agreement showing that Suwonnee Pongnorsing sold  
8 Respondent Vicijan the pharmacy. In response, Vicijan provided a large stack of documents  
9 which showed the following: (1) on September 15, 2014, the Board of Equalization issued  
10 Respondent West Modesto a seller's permit; (2) on July 25, 2015, Respondent West Modesto  
11 submitted an application for an Employer Identification Number; (3) e-mail communication  
12 confirming that a pharmacy permit was issued to Respondent West Modesto on June 1, 2015;  
13 (4) an online DEA application, dated June 3, 2015; and (5) a store lease agreement between  
14 Suwonnee Pongnorsing and Respondent Vicijan, dated October 1, 2015.

15           21. During the Board Inspector's conversation with Respondent Vicijan on January 6,  
16 2016, Vicijan provided an unsigned sales agreement indicating that Suwonnee Pongnorsing  
17 owned the business and was selling it to Vicijan for \$15,000.00 under the new name West  
18 Modesto Pharmacy.

19           22. During the Board Inspector's conversation with Suwonnee Pongnorsing on January 6,  
20 2016, Pongnorsing provided a signed and dated sales agreement, dated June 1, 2015 (the same  
21 date the pharmacy permit was issued to Respondent West Modesto). After becoming suspicious  
22 of whether the sales agreement Pongnorsing provided to the Inspector was in fact signed and  
23 dated June 1, 2015, the Inspector questioned Respondent Vicijan about it and Vicijan admitted  
24 that she had signed the document shortly after Pongnorsing arrived at the pharmacy, on January 6,  
25 2016, because she could not produce a signed original as the Inspector requested.

26           23. During the Board Inspector's conversation with Respondent Vicijan on January 6,  
27 2016, the Inspector asked if Vicijan had provided a check to Suwonnee Pongnorsing for purchase  
28 of the pharmacy. Vicijan stated she did. However, neither Vicijan nor Pongnorsing could tell the

1 Inspector the date of sale and purchase of the pharmacy. The Inspector requested from Vicijan  
2 any documents to establish the date of sale and purchase of the pharmacy.

3 24. Based upon the Board Inspector's inspection of Respondent West Modesto on  
4 January 6, 2016, it became apparent that Respondent Vicijan and Suwonnee Pongnorsing created  
5 a sham "paper" sale of the business in order to circumvent the pending charges against Westside  
6 Plaza Pharmacy's permit (Pongnorsing continued to operate and control the pharmacy), in the  
7 aforementioned Accusation, and to obtain a new DEA registration so the pharmacy could resume  
8 possessing and distributing controlled substances.

9 25. At the conclusion of the January 6, 2016 inspection, the Board Inspector requested  
10 that Respondent Vicijan provide a copy of the canceled check or any proof of payment regarding  
11 her alleged purchase of Westside Plaza Pharmacy. Vicijan never provided any proof of payment  
12 regarding her alleged purchase of Westside Plaza Pharmacy except for a copy of a check for  
13 \$283.07, dated January 4, 2016, two days prior to the inspection, with no proof the check was  
14 cashed or deposited.

15 26. On or about January 11, 2016, Suwonnee Pongnorsing provided an e-mail to the  
16 Board Inspector in which Pongnorsing stated that an inventory of all controlled substances at  
17 Westside Plaza Pharmacy was conducted on May 29, 2015, prior to Respondent Vicijan's alleged  
18 purchase of Westside Plaza Pharmacy.

19 27. From June 1, 2015 through January 8, 2016, Respondent Vicijan maintained two  
20 active pharmacy permits for the same location—one for Westside Plaza Pharmacy and another for  
21 Respondent West Modesto, both of which have the same location.

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1 to a Board Inspector in order to support Vicijan's false statements that she had actually bought  
2 Westside Plaza Pharmacy in a bona fide transaction.

3 b. Respondent West Modesto, by and through its owner and Pharmacist-in-Charge  
4 Respondent Vicijan, provided false information on its pharmacy permit application when it  
5 indicated that it was a new pharmacy rather than a change of ownership.

6 c. Respondent West Modesto, by and through its owner and Pharmacist-in-Charge  
7 Respondent Vicijan, failed to provide requested bank documents to Board Inspector M.S.  
8 showing the alleged purchase and lease payments for the pharmacy.

9 d. The circumstances are described with more particularity in paragraphs 9-27, above.

10 **RESPONDENT VICIJAN**

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct—Knowingly Signing a Document That Falsely Represents the**  
13 **Existence of a Set of Facts)**

14 31. Respondent Vicijan is subject to disciplinary action under section 4301(g) of the Code  
15 in that on January 6, 2016, Respondent Vicijan, as Respondent West Modesto's owner and  
16 Pharmacist-in-Charge, signed a contract for sale, back-dated it to June 1, 2015, and then provided  
17 it to Board Inspector in order to support Vicijan's false statements that she had actually bought  
18 Westside Plaza Pharmacy in a bona fide transaction, and Vicijan provided false information on  
19 Respondent West Modesto's pharmacy permit application when Vicijan indicated it was a new  
20 pharmacy rather than a change of ownership. The circumstances are described with more  
21 particularity in paragraphs 9-27, above.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct—Change in Owners)**

24 32. Respondent Vicijan is subject to disciplinary action under section 4301(o) of the  
25 Code, in conjunction with California Code of Regulations, title 16, section 1709, in that  
26 Respondent Vicijan, as West Modesto's owner and Pharmacist-in-Charge, failed to notify the  
27 Board of her alleged purchase of Westside Plaza Pharmacy prior to transferring inventory, and  
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1 maintained two active permits for the same location. The circumstances are described with more  
2 particularity in paragraphs 9-27, above.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct—Engaging in Conduct That Subverts or Attempts to Subvert an**  
5 **Investigation of the Board)**

6 33. Respondent Vicijan is subject to disciplinary action under section 4301(q) of the Code  
7 in that:

8 a. On January 6, 2016, Respondent Vicijan, as Respondent West Modesto's owner and  
9 Pharmacist-in-Charge, signed a contract for sale, back-dated it to June 1, 2015, and then provided  
10 it to a Board Inspector in order to support Vicijan's false statements that she had actually bought  
11 Westside Plaza Pharmacy in a bona fide transaction.

12 b. Respondent Vicijan provided false information on Respondent West Modesto's  
13 pharmacy permit application when she indicated that it was a new pharmacy rather than a change  
14 of ownership.

15 c. Respondent Vicijan failed to provide requested bank documents to a Board Inspector  
16 showing Vicijan's alleged purchase of Westside Plaza Pharmacy.

17 d. The circumstances are described with more particularity in paragraphs 9-27, above.

18 **PRAYER**

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

21 1. Revoking or suspending Original Permit Number PHY 52073, issued to Nada Vicijan  
22 dba West Modesto Pharmacy.

23 2. Revoking or suspending Original Pharmacist License Number RPH 41607, issued to  
24 Nada Vicijan;

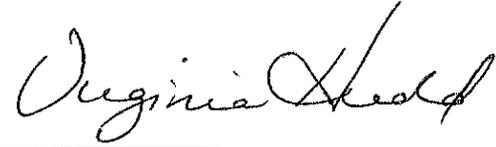
25 3. Ordering Nada Vicijan dba West Modesto Pharmacy to pay the Board of Pharmacy  
26 the reasonable costs of investigation and enforcement of this case, pursuant to Business and  
27 Professions Code section 125.3; and,

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

DATED: 9/27/16



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

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